

Ontario Government Seeks to Close the Gender Pay Gap With New Legislation

The Ontario Government has recently made bold and controversial changes to labour and employment legislation. We have previously reported on [Bill 148](#), in which the Government introduced sweeping reforms to employment standards and labour relations legislation to include a \$14 dollar minimum wage (\$15 on Jan 1, 2019), equal pay for part time workers and rules designed to make unionizing easier.

They have now introduced [Bill 203, the "Pay Transparency Act, 2018 \(the "PTA"\)](#), with the lofty and noble policy goal of closing the gender pay gap. Although Bill 203 is not yet law, we believe there is a strong likelihood that it will be passed based on its current form. Accordingly, we have summarized the key features:

- **No Asking About Previous Salary** - The legislation would prohibit employers from seeking "compensation history information" about an applicant for a position. This means that - Just like employers are currently precluded from generally asking an applicant about enumerated grounds of discrimination (e.g. marital status, religion, etc.) during a job interview - employers would not be able to ask about how much money the employee previously made.
- **Compensation Range in Job Posting** - If employers publicly advertise available positions, they would be forced to set out in the advertisement an expected compensation range. It appears like the purpose of this is to give the employer less 'wiggle room' when negotiating salary and to, therefore, ensure less disparity (or no disparities) in salaries between employees in the same position.
- **Transparency Reports** - Large employers would have to prepare "transparency reports" that would provide the Government with information about the employer's workforce composition and differences in compensation within the workforce with respect to gender. As a result, large employers (what constitutes a "large" employer has not been set out yet) would have to audit themselves and give potentially incriminating



Daniel Pugen

Partner, Employment & Labour

PHONE

416 777 5194

EMAIL

dpugen@torkinmanes.com

Daniel is a partner of the firm and a member of our Employment & Labour Group. He represents and advises management and employers on a wide variety of labour, employment and human resources/workplace issues.

information to the Government. The Ministry would have the authority to publish the transparency reports, including on the internet.

- **No Reprisal** - The legislation would prohibit reprisals against employees if employees inquire about their compensation, disclose their compensation, give information to the Government about compliance or non-compliance with the PTA or otherwise ask the employer to comply with the PTA. Notably, employees could not be penalized for disclosing their salary to other employees even if the employee's contract or an employer policy prohibits such disclosure.
- **Enforcement** - As an enforcement measure, the legislation would create "compliance officers" to conduct audits and issue notices of contravention and fines against an employer for violations of the PTA. In addition, the Government would have the authority to publish the contravention on the internet – thus causing potential embarrassment and bad press to the offending employer. Complaints would be heard by an arbitrator in a unionized setting or otherwise by the Ontario Labour Relations Board.

The PTA is an important development as the Government seeks to impose additional obligations on employer hiring and compensation practices. Employers should carefully monitor the progress of the PTA and ensure that hiring and compensation policies are being applied objectively and in a non-discriminatory manner.