

# THROUGH THE LOOKING GLASS (CEILING): ONTARIO PASSES NEW ACT TO CLOSE GENDER WAGE GAP

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**Categories:** [Insights](#), [Publications](#)

Last week, the Ontario Government enacted the *Pay Transparency Act, 2018* [\[1\]](#) (the “Act”). Introduced on March 20, 2018, the Act progressed quickly to Royal Assent on May 7, 2018, surprising many who expected the Act’s outcome to hinge on the upcoming provincial election in June. The Act aligns with recent changes to the *Employment Standards Act, 2000* as well as the Federal Government’s renewed focus on overcoming gender inequality in the workforce (which we wrote about [here](#)).

The new legislation will take effect on January 1, 2019.

The Act contains some important implications for Ontario employers:

## *Compensation history*

Employers will be prohibited from asking an individual who applies for employment, either directly or indirectly, about his or her compensation history. Employers may seek information about ranges of compensation for a comparable position, and employers are not prohibited from considering or relying on compensation information that is voluntarily disclosed by the applicant or publicly available.

## *Job postings*

Employers must include expected compensation, or a range of expected compensation, in each external job posting for a specific position advertised to the general public. However, the Act specifically exempts “help wanted” posters, recruitment campaigns and internal job postings from this requirement.

## *Pay transparency reports*

Perhaps the most significant change for employers is the requirement that every employer of at least 100 employees must prepare a pay transparency report no later than May 15 each year. The form and content of the report will be prescribed by regulations, which are not yet available. The Act currently requires that reports include information about the employer’s workforce composition and differences in compensation with respect to gender and other prescribed characteristics.

Employers with 250 employees or more must submit their first report by May 15, 2020. Employers with 100-249 employees must submit their first report to the Ministry by May 15, 2021.

Employers should note that reports must be posted either online or in a conspicuous place in every workplace of the employer where it is likely to come to the attention of employees. Reports submitted to the Ministry may also be published online.

#### *Anti-reprisal provisions*

Under the Act, employers may not intimidate, dismiss or otherwise penalize employees for asking the employer about his or her compensation, disclosing his or her compensation to another employee, inquiring about a report, providing information to the Minister about the employer's compliance with the Act, or asking the employer to comply with the Act.

Where an employer contravenes the anti-reprisal provision, an employee may have his or her complaint decided by binding arbitration (if a collective agreement is in force), or by filing a complaint with the Ontario Labour Relations Board. The burden of proof is on the employer to show that it did not contravene the anti-reprisal provisions.

Sections 9 through 13 of the Act set out the procedure for filing a complaint and the powers of compliance officers under the Act. Employers can expect that the regulations, once drafted, will specify penalties or a range of penalties, including any criteria a compliance officer may take into account. Employers should also note that the Minister may publish, online or otherwise, information about contraventions, including the name of the employer, the alleged contravention and the applicable penalty.

As the deadline for implementation of the Act draws closer, McMillan's Employment and Labour Group will be monitoring for updates to regulations and compliance documents.

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[1] SO 2018, C 5.[ps2id id='1' target='']

#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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