

# TRANSPARENCY FOR TALENT: PROPOSED LEGISLATION WOULD MANDATE SALARY RANGE AND ARTIFICIAL INTELLIGENCE DISCLOSURE IN HIRING PROCESS

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In response to the growing adoption of artificial intelligence (“AI”) in corporate hiring practices and gender-related workplace concerns, the Ontario Ministry of Labour, Immigration, Training and Skills Development (the “Ministry”) [announced](#) on November 6, 2023 that the provincial government will soon propose legislation aimed at providing additional transparency to Ontario workers. If passed, the new legislation would require employers to disclose salary ranges in job postings and to inform job-seekers if artificial intelligence is being utilized in the hiring process. In addition, the Ministry advised that the Ontario government is considering proposing legislation restricting the use of Non-Disclosure Agreements (“NDAs”) in settlements related to workplace sexual harassment or violence.

## 1. Salary Range Disclosure

The proposed legislation would mandate employers in Ontario to include expected salary ranges in job postings. While the province has not released details, the announcement closely follows the recent introduction of the *Pay Transparency Act* in British Columbia. Employers may seek guidance from the BC legislation and [McMillan LLP’s corresponding analysis](#) to anticipate what to expect from Ontario’s proposed legislation.

## 2. AI Use in Hiring

As the adoption of AI tools and algorithms in hiring processes increases, the proposed legislation attempts to address potential privacy and legal concerns. If passed, the legislation would require employers to disclose whether AI is used during their hiring process but it is not clear if employers would be required to provide more details other than to simply identify the use of AI.

While AI and automated hiring tools may be emerging as the latest trend and offer attractive efficiencies, their use presents significant legal risks for employers, which should be carefully assessed on a case-by-case basis. McMillan LLP previously published a [deep dive](#) into legal risks associated with AI hiring tools in Canada.

### 3. Restrictions on Non-Disclosure Agreements (NDAs)

While not included in the proposed legislation, the Ministry also announced that the provincial government is currently considering introducing restrictions on the use of NDAs in the settlement of cases of workplace sexual harassment or violence. To determine whether or not to proceed, the provincial government will be conducting consultations and a detailed analysis on this potential prohibition. Prince Edward Island is the only other Canadian jurisdiction that has passed legislation prohibiting NDAs, although other Canadian jurisdictions are considering similar legislation. In PEI, the legislation prohibits NDAs in the context of allegations of harassment or discrimination.

### 4. Additional Proposed Changes

Other proposed changes worthy of note include (a) clarifications to vacation pay provisions under the *Employment Standards Act, 2000* (“**ESA**”) to emphasize that employers must obtain an employee’s written consent to pay vacation pay in any other way other than a lump sum before their vacation; and (b) establishing a regulatory authority under the *Digital Platform Workers’ Rights Act, 2022* (“**DPWRA**”) to offer more flexibility on how pay based on minimum wage must be determined and to align it more closely with the ESA.

#### Key Takeaways for Employers

While McMillan LLP is awaiting further announcements with details about the proposed legislation, a few key takeaways are clear. The first is that employers should start preparing to disclose salary ranges in job postings and should look to the *BC Pay Transparency Act* to get a sense of the potential scope of the legislation. The second is that employers should take the opportunity before the legislation is passed to review the AI and automated hiring tools they are using (or considering) and to contact their legal counsel to assess the risks associated with these programs. Finally, employers should look at their vacation pay practices to ensure that they are following the current legislation and have written authorizations in place.

In addition, employers may want to consider weighing in on the discussion and voicing their opinions to the provincial government about the proposed legislation. McMillan Vantage is a full-service national public affairs firm driven by client service excellence, and unique in Canada given their strategic partnership with McMillan LLP. With the Government of Ontario set to announce consultations on the use of NDAs in workplace sexual harassment cases in the coming days, and with opportunities to advance key public policy amendments through the regulatory process across all components of this intended legislation, McMillan Vantage is well-placed to advance your priorities and limit your exposure to legislative, regulatory and reputational risk. For more information, please contact [Karl Baldauf](#).

by [Saadia Naim](#), [Robbie Grant](#), [Dave McKechnie](#), [Karl Baldauf](#) (McMillan Vantage)

### **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.