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Bill 203

An Act respecting transparency of pay in employment

The Hon. K. Flynn
Minister of Labour

Government Bill

1st Reading March 6, 2018

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The *Pay Transparency Act, 2018* is enacted. The Act establishes requirements relating to the disclosure of information about the compensation of employees and prospective employees.

Section 4 prohibits employers from seeking compensation history information about an applicant for a position. Section 5 requires employers to include in any publicly advertised job posting information about the expected compensation or range of compensation for the position. Section 6 requires prescribed employers to prepare pay transparency reports that include information about the employer, the employer's workforce composition and differences in compensation in the employer's workforce with respect to gender and other prescribed characteristics.

Section 7 is an anti-reprisal provision that prohibits employers, or persons acting on their behalf, from intimidating, dismissing or otherwise penalizing employees for, among other things, making inquiries about the employee's compensation, disclosing their compensation or asking the employer to comply with the Act or the regulations. Complaints by employees that an employer has contravened the anti-reprisal provision may be dealt with by arbitration or by filing a complaint with the Ontario Labour Relations Board.

Sections 8 to 11 address the powers and duties of compliance officers who may be appointed to enforce the Act. Compliance officers may conduct compliance audits, and if an officer believes that a person has contravened a provision of this Act or the regulations, the officer may issue a notice of contravention to the person under section 12. Sections 13 to 15 specify the procedures that apply for disputing a notice of contravention before the Ontario Labour Relations Board and enforcing the notice in a court.

Miscellaneous provisions are included addressing limitation periods and other matters, and related regulation-making powers are added.

An Act respecting transparency of pay in employment

CONTENTS

		INTERPRETATION, APPLICATION, ETC.
1.	Definitions	
2.	Minister responsible	
3.	Crown bound	
		COMPENSATION HISTORY
4.	Compensation history	
		COMPENSATION RANGE INFORMATION
5.	Compensation range information	
		PAY TRANSPARENCY REPORTS
6.	Pay transparency reports	
		ANTI-REPRISAL
7.	Anti-reprisal	
		COMPLIANCE
8.	Compliance officers	
9.	Powers and duties of officers	
10.	Officers not compellable	
11.	Compliance audits	
12.	Notice of contravention	
13.	Review of notice of contravention	
14.	When no decision after six months	
15.	Filing of notice of contravention	
		MISCELLANEOUS
16.	Limitation period	
17.	Persons from Board not compellable	
18.	Service of documents	
		REGULATIONS
19.	Regulations	
		COMMENCEMENT AND SHORT TITLE
20.	Commencement	
21.	Short title	

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION, APPLICATION, ETC.

Definitions

1 In this Act,

“applicant” means an individual who applies for employment with an employer, other than an individual who is an employee of the employer at the time of applying; (“candidat”)

“Board” means the Ontario Labour Relations Board; (“Commission”)

“compensation” means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount; (“rémunération”)

“employee” has the same meaning as in the *Employment Standards Act, 2000*; (“employé”)

“employer” has the same meaning as in the *Employment Standards Act, 2000*; (“employeur”)

“Minister” means the member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“publicly advertised job posting” means an external job posting for a specific job that an employer advertises to the general public in any manner, but for greater certainty does not include recruitment campaigns, general help wanted signs or positions that are only advertised to existing employees of the employer; (“annonce publique de poste”)

“regulations” means the regulations made under this Act. (“règlement”)

Minister responsible

2 (1) The Minister is responsible for the administration of this Act.

Policies

(2) The Minister may establish policies respecting the interpretation, administration and enforcement of this Act.

Delegation of powers

(3) Where, under this Act or the regulations, any power or duty is granted to or vested in the Minister or the Deputy Minister of the Ministry, the Minister or Deputy Minister may, in writing, delegate that power or duty from time to time to any employee in the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation.

Crown bound

3 This Act binds the Crown.

COMPENSATION HISTORY

Compensation history

4 (1) No employer shall seek compensation history information about an applicant by any means, whether personally or through an agent.

Unprompted disclosure

(2) Nothing in this section prohibits an applicant from voluntarily and without prompting disclosing compensation history information to an employer or an employer’s agent.

Comparable compensation

(3) Nothing in this section prohibits an employer from seeking information about the ranges of compensation or aggregate compensation provided for positions comparable to the position for which the applicant is applying.

Use of information

(4) Where an applicant has made a disclosure of compensation history information described in subsection (2) or the employer has obtained information described in subsection (3), nothing in this section prohibits the employer from considering or relying on such information in determining compensation for the applicant.

Exception, public information

(5) This section does not apply to compensation history information that is publicly available.

COMPENSATION RANGE INFORMATION

Compensation range information

5 Every employer who advertises a publicly advertised job posting shall include in the posting information about the expected compensation for the position or the range of expected compensation for the position.

PAY TRANSPARENCY REPORTS

Pay transparency reports

6 (1) Every prescribed employer shall, with respect to each prescribed reporting period, prepare a pay transparency report that complies with the requirements in the regulations and that contains the prescribed information relating to the employer, the employer’s workforce composition and differences in compensation in the employer’s workforce with respect to gender and other prescribed characteristics.

Same

(2) The prescribed employer shall submit the pay transparency report to the Ministry by the prescribed time, and in accordance with any prescribed requirements.

Posting

(3) The prescribed employer shall post the pay transparency report online or in at least one conspicuous place in every workplace of the employer where it is likely to come to the attention of employees in that workplace.

Publication

(4) The Ministry may publish, or otherwise make available to the public, the pay transparency reports submitted under subsection (2).

Internet publication

(5) Authority to publish under subsection (4) includes authority to publish on the Internet.

ANTI-REPRISAL

Anti-reprisal

7 (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so because the employee has,

- (a) made inquiries to the employer about the employee's compensation;
- (b) disclosed the employee's compensation to another employee;
- (c) made inquiries about a pay transparency report made under section 6, or about information contained in such a report;
- (d) given information about the employer's compliance or non-compliance with the requirements of this Act or the regulations to the Ministry; or
- (e) asked the employer to comply with this Act or the regulations.

Arbitration

(2) Where an employee complains that an employer or person acting on behalf of an employer has contravened subsection (1), the employee may either,

- (a) have the matter dealt with by final and binding settlement by arbitration under a collective agreement, where one is in place; or
- (b) file a complaint with the Board, in which case any rules governing the practice and procedure of the Board apply, with all necessary modifications, to the complaint.

Board may inquire

(3) The Board may inquire into any complaint filed under clause (2) (b), and where it does so, the following provisions of the *Labour Relations Act, 1995* apply, with any necessary modifications, for the purposes of this Act:

1. Section 96, except subsection (5).
2. Section 110, including, for greater certainty, the power to make rules under subsection 110 (18).
3. Section 111.
4. Section 114.
5. Section 116.

Onus of proof

(4) On an inquiry by the Board into a complaint filed under clause (2) (b), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer.

Board may substitute penalty

(5) Where, on an inquiry by the Board into a complaint filed under clause (2) (b), the Board determines that an employee has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as seems just and reasonable in all the circumstances.

Jurisdiction when complaint by public servant

(6) For greater certainty, the Board shall exercise jurisdiction under this section when a complaint filed under clause (2) (b) is in respect of an employee who is a public servant within the meaning of the *Public Service of Ontario Act, 2006*.

Exception

(7) Despite subsection (2), a complaint by a person who is subject to a rule or code of discipline under the *Police Services Act* in relation to an alleged contravention of subsection (1) shall be dealt with under that Act.

COMPLIANCE

Compliance officers

8 (1) Such persons as are considered necessary to enforce this Act and the regulations may be appointed under Part III of the *Public Service of Ontario Act, 2006* as compliance officers.

Certificate of appointment

(2) The Deputy Minister of the Ministry shall issue a certificate of appointment bearing the Deputy Minister's signature or a facsimile of it to every compliance officer.

Powers and duties of officers

9 (1) A compliance officer may exercise the powers conferred upon compliance officers under this Act and shall perform the duties imposed upon compliance officers under this Act.

Officers to follow policies

(2) A compliance officer shall follow any policies established by the Minister under subsection 2 (2).

Hearing not required

(3) A compliance officer is not required to hold a hearing in exercising any power or making any decision under this Act.

Officers not compellable

10 (1) A compliance officer is not a competent or compellable witness in a civil proceeding respecting any information given or obtained, statements made or received, or records or other things produced or received under this Act except for the purpose of carrying out the officer's duties under this Act.

Same

(2) A compliance officer shall not be compelled in a civil proceeding to produce any record or other thing the officer has made or received under this Act except for the purpose of carrying out the officer's duties under this Act.

Compliance audits

11 (1) A compliance officer may, without a warrant, conduct a compliance audit of an employer and, for that purpose, may enter and inspect any place in order to investigate a possible contravention of this Act or to perform an inspection to ensure that this Act is being complied with.

Requirements re conduct of audit

(2) A compliance audit and any related inspection and investigation shall be conducted in accordance with any requirements set out in the regulations.

Powers of officer

- (3) A compliance officer conducting an investigation or inspection as part of a compliance audit may,
- (a) examine a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (b) require the production of a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (c) remove for review and copying a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and
 - (e) question any person on matters the officer thinks may be relevant to the investigation or inspection.

Copy admissible in evidence

(4) A copy of a record that purports to be certified by a compliance officer as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value.

Obligation to produce and assist

(5) If a compliance officer demands that a record or other thing be produced, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

Obstruction

(6) No person shall hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with a compliance officer conducting an investigation or inspection.

Same

- (7) No person shall,
- (a) refuse to answer questions on matters that a compliance officer thinks may be relevant to an investigation or inspection; or
 - (b) provide a compliance officer with information on matters the officer thinks may be relevant to an investigation or inspection that the person knows to be false or misleading.

Separate inquiries

- (8) No person shall prevent or attempt to prevent a compliance officer from making inquiries of any person separate and apart from another person under clause (3) (e).

Notice of contravention

- 12** (1) If a compliance officer believes that a person has contravened a provision of this Act or the regulations, the officer may issue a notice to the person setting out the officer's belief and specifying the amount of the penalty for the contravention.

Amount of penalty

- (2) The amount of the penalty shall be determined in accordance with the regulations.

Penalty within range

- (3) If a range has been prescribed as the penalty for a contravention, the compliance officer shall determine the amount of the penalty in accordance with the prescribed criteria, if any.

Information

- (4) The notice shall contain or be accompanied by information setting out the nature of the contravention.

Service

- (5) A notice issued under this section shall be served on the person in accordance with the regulations.

Deemed contravention

- (6) The person shall be deemed to have contravened the provision set out in the notice if,
- (a) the person fails to apply to the Board for a review of the notice within the period set out in subsection 13 (1); or
 - (b) the person applies to the Board for a review of the notice and the Board finds that the person contravened the provision set out in the notice.

Penalty

- (7) A person who is deemed to have contravened a provision of this Act or the regulations shall pay to the Minister of Finance the penalty for the deemed contravention in accordance with the regulations.

Publication re notice of contraventions

- (8) If a person, including an individual, is deemed under subsection (6) to have contravened a provision of this Act or the regulations after having been issued a notice of contravention, the Ministry may publish or otherwise make available to the general public the name of the person, a description of the deemed contravention, the date of the deemed contravention and the penalty for the deemed contravention.

Internet publication

- (9) Authority to publish under subsection (8) includes authority to publish on the Internet.

Disclosure

- (10) Any disclosure made under subsection (8) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*.

Director

- (11) This section does not apply with respect to a contravention of this Act or the regulations by a director or officer of an employer that is a corporation.

Review of notice of contravention

- 13** (1) A person against whom a notice of contravention has been issued under section 12 may dispute the notice if the person makes a written application to the Board for a review,

- (a) within 30 days after the date of service of the notice; or
- (b) if the Board considers it appropriate in the circumstances to extend the time for applying, within the period specified by the Board.

Hearing

(2) The Board shall hold a hearing for the purposes of the review.

Parties

(3) The parties to the review are the person against whom the notice was issued and the Ministry.

Parties given full opportunity

(4) The Board shall give the parties full opportunity to present their evidence and make their submissions.

Practice and procedure for review

(5) The Board shall determine its own practice and procedure with respect to a review under this section.

Rules

(6) The chair of the Board may make rules with respect to a review under this section,

- (a) governing the Board's practice and procedure and the exercise of its powers; and
- (b) providing for forms and their use.

Conflict with *Statutory Powers Procedure Act*

(7) If there is a conflict between the rules made under this section and the *Statutory Powers Procedure Act*, the rules under this section prevail.

Rules not regulations

(8) Rules made under this section are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

Quorum

(9) The chair or a vice-chair of the Board constitutes a quorum for the purposes of this section and is sufficient for the exercise of the jurisdiction and powers of the Board under it.

Decision final

(10) A decision of the Board is final and binding upon the parties to the review and any other parties as the Board may specify.

Judicial review

(11) Nothing in subsection (10) prevents a court from reviewing a decision of the Board under this section, but a decision of the Board concerning the interpretation of this Act or the regulations shall not be overturned unless the decision is unreasonable.

Onus

(12) On a review under this section, the onus is on the Ministry to establish, on a balance of probabilities, that the person against whom the notice of contravention was issued contravened the provision of this Act or the regulations indicated in the notice.

Decision

(13) The Board may,

- (a) find that the person did not contravene the provision and rescind the notice;
- (b) find that the person did contravene the provision and affirm the notice; or
- (c) find that the person did contravene the provision but amend the notice by reducing the penalty.

When no decision after six months

14 (1) This section applies if the Board has commenced a hearing to review a notice of contravention, six months or more have passed since the last day of the hearing and a decision has not been made.

Termination of proceeding

(2) On the application of a party in the proceeding, the chair may terminate the proceeding.

Re-institution of proceeding

(3) If a proceeding is terminated according to subsection (2), the chair shall re-institute the proceeding upon such terms and conditions as the chair considers appropriate.

Filing of notice of contravention

15 (1) If a notice of contravention has been issued under this Act, a copy of the notice, certified by a compliance officer to be a true copy, may be filed in a court of competent jurisdiction.

Advising of filing

(2) A compliance officer who files a copy of the notice of contravention shall serve a letter in accordance with the regulations upon the person against whom the order was issued advising the person of the filing.

Notice enforceable

(3) A notice of contravention filed under subsection (1) may be enforced in the same manner as a judgment or order of the court.

MISCELLANEOUS

Limitation period

16 No notice of contravention shall be issued under this Act more than one year after the occurrence of the last act or default upon which the contravention is based.

Persons from Board not compellable

17 (1) Except with the consent of the Board, none of the following persons may be compelled to give evidence in a civil proceeding or in a proceeding before the Board or another board or tribunal with respect to information obtained while exercising their powers or performing their duties under this Act:

1. A Board member.
2. The registrar of the Board.
3. An employee of the Board.

Non-disclosure

(2) A labour relations officer under the *Labour Relations Act, 1995* who receives information or material under this Act shall not disclose it to any person or body other than the Board unless the Board authorizes the disclosure.

Service of documents

18 Where service of a document on a person is required or permitted under this Act, it is sufficiently served if it is served in accordance with the regulations.

REGULATIONS

Regulations

19 The Lieutenant Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make regulations,

- (a) respecting any matter that this Act describes as being prescribed by or provided for in the regulations, or that is to be done in accordance with the regulations;
- (b) governing the service of documents;
- (c) defining or clarifying any word or expression used in this Act but not otherwise defined;
- (d) declaring an "Equal Pay Day";
- (e) governing pay transparency reports, including, without being limited to, their content and form;
- (f) governing compliance audits, including requirements on how compliance officers conduct compliance audits and any related inspections and investigations;
- (g) exempting any class of employer from the requirements of this Act;
- (h) governing penalties for contraventions for the purposes of section 12, and without restricting the generality of this power,
 - (i) establishing different penalties or ranges of penalties for different types of contraventions or the method of determining those penalties or ranges,
 - (ii) specifying that different penalties, ranges or methods of determining a penalty or range apply to contraveners who are individuals and to contraveners that are corporations, or
 - (iii) prescribing criteria a compliance officer is required or permitted to consider when imposing a penalty.

COMMENCEMENT AND SHORT TITLE

Commencement

20 This Act comes into force on January 1, 2019.

Short title

21 The short title of this Act is the *Pay Transparency Act, 2018*.