

## **Ontario To Require Employers to Disclose Salary Range on Job Posting and “AI” Use in Hiring Consultation on the Use of NDAs in Settlement of Sexual Harassment, etc.**

November 7, 2023

On November 6, 2023, the [Government of Ontario announced](#) it will introduce legislation which, if passed, will require an employer to disclose (a) an expected salary range in any job posting, and (b) whether artificial intelligence (“AI”) is used in the hiring process. The government further announced it will conduct consultations on ending the use of a non-disclosure agreement (“NDA”) in the settlement of a case of workplace sexual harassment, misconduct, or violence.

### **Disclosure of salary range**

The proposed legislation is designed to address the gender wage gap, by making it more difficult for employers to pay different salaries based on gender. Both British Columbia and Prince Edward Island already require an employer to publish salary information on a job posting. In Ontario, roughly 37% of online job postings include salary information.

### **Disclosure of AI in the hiring process**

The proposed legislation will require an employer to inform job seekers that AI is being used to inform decisions in the hiring process. According to the Government, the legislation is designed to ensure job seekers are (a) not excluded from the job market because of technological biases (such as algorithmic bias which can lead to unfair outcomes due to skewed or limited input data), and (b) their privacy rights are protected. If passed, Ontario will be the first province in Canada with legislation aimed at AI in the job seeking process.

### **Consultation on the use of NDAs**

The Government will conduct consultations on ending the use of an NDA in the settlement of cases of workplace sexual harassment, misconduct, or violence. This follows the Province’s 2022 restriction of the use of an NDA as between a publicly-assisted university or college of applied arts and technology or a private career college and any person, regarding an allegation or complaint of sexual misconduct (see our June 2023 [Briefing Note](#)).

In February 2023, the Canadian Bar Association passed a resolution to promote the fair and proper use of NDAs and discourage their use to silence victims who report experiences of abuse, discrimination, and harassment in Canada, and to advocate for legislative changes regarding same.

Prince Edward Island was the first province in Canada to pass legislation restricting the use of NDAs in sexual harassment and discrimination cases. Legislation was tabled in British Columbia, Nova Scotia, and Manitoba. However, the Manitoba legislation did not proceed past second reading, and the Nova Scotia legislation, while it passed first reading, was not carried forward. The British Columbia legislation has passed first reading and remains live.

Similar legislation has been passed in various United States jurisdictions including California, Maine, Washington and New York. Legislation is being evaluated in the United Kingdom and Australia.

### **Clarity re: vacation pay agreement**

The Government intends to amend the vacation pay provisions under the *Employment Standards Act, 2000* (“ESA”), to clarify that a written agreement is required if vacation pay is paid in any way other than a lump sum before vacation. At present, the ESA refers to an agreement but not a written agreement.

### **Greater flexibility re: minimum wage for digital platform work**

The Government is proposing changes to the *Digital Platform Workers’ Rights Act, 2022* to provide greater flexibility on how minimum wage must be determined for “digital platform work,” which includes ride share, delivery, and courier work. The changes are intended to create greater alignment with the ESA.

**We will keep readers up to date as these matters develop.**

**For more information or to discuss how the amendments may impact your business, contact your Sherrard Kuzz LLP lawyer, or [info@sherrardkuzz.com](mailto:info@sherrardkuzz.com).**

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