



**ONTARIO  
EQUAL PAY COALITION**

**CLOSE THE GENDER PAY GAP**

**STRENGTHENING ONTARIO'S  
*PAY TRANSPARENCY BILL:*  
8 CRITICAL AMENDMENTS**

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**26 March 2018**

**Pay Transparency is a tool to enforce compliance with existing law**

Pay Transparency is an important enforcement tool used to buttress the existing human rights laws to help close the gender pay gap. Pay transparency promotes compliance by creating accountability for non-discriminatory pay.

Women have the fundamental human right to be free from systemic sex discrimination in pay. A “right” is just that – it is a legal entitlement that must be enforced. It is not a privilege. It is not an option. It is a baseline entitlement for every woman in the workplace.

**Pay Transparency is needed because employers are flouting the law**

All employers in the province have had a legal obligation to deliver discrimination-free pay since the 1960s. But employers continue to flout the law.

As reported by Ontario's Pay Equity Office, 54% of employers have gender pay gaps contrary to the *Pay Equity Act* even though pay equity has been the law since 1987. In

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2016 the provincial Gender Wage Gap Steering Committee reported that the pay gap has not closed in thirty years.

In its March 2018 *Women's Economic Empowerment Strategy*, the government acknowledged that "The gender wage gap in Ontario has remained stagnant for the last decade, with women earning around 30 per cent less than men." Canada's gender pay gap is the 7<sup>th</sup> largest out of the 34 countries in the OECD.

### **Without Pay Transparency women can't enforce their rights to equal pay**

At present, non-unionized workers do not know the pay structure in their workplaces. They can be disciplined and even terminated for asking about or sharing wage information. Yet, provincial laws require individual workers to file individual complaints to enforce their rights to discrimination-free pay. That right *cannot* be enforced – it is illusory – if women don't know their employer's pay structure.

Pay Transparency remedies this defect.

Pay Transparency puts the onus on employers to disclose their wages to *prove* that they are complying with their existing legal obligations under Ontario's *Human Rights Code*, *Employment Standards Act*, and *Pay Equity Act*.

Pay Transparency in the form of mandatory disclosure of compensation information enables workers, particularly non-unionized workers, to know and enforce their right to non-discriminatory pay.

### **Pay Transparency is the global best practice and Ontario is playing catch up**

Pay Transparency is an internationally recognized approach to closing the gender pay gap. In 2014, the European Union Commission passed a recommendation that its member states implement pay transparency. Australia implemented pay transparency measures.

The OECD, ILO and UN Women led Equal Pay International Coalition (EPIC) which launched in 2017 has identified pay transparency as an important tool in closing the gender pay gap. Canada plays a leading role in EPIC, holding a seat on the Coalition's Interim Steering Committee. In addition, Premier Kathleen Wynne is one of 25 global Equal Pay Champions tasked with promoting EPIC.

Now is the time for Ontario to implement strong pay transparency legislation so that it can catch up with the global leaders in closing the gender pay gap.

## **The Reintroduced Pay Transparency Bill must be stronger than Bill 203**

The Equal Pay Coalition has been demanding pay transparency for nearly a decade. On Equal Pay Day in April 2017, the Coalition launched its fully drafted model [Pay Transparency to Close the Gender Pay Gap Act](#).

On 6 March 2018 the Ontario government introduced Bill 203, the *Pay Transparency Act*. After the last legislative session was prorogued on 15 March 2018, the *Pay Transparency Act* was reintroduced as Bill 3 on 20 March 2018. Bill 3 had Second Reading on Monday 26 March 2018.

Bill 3 is essentially unchanged from Bill 203. The Act needs amendments if it is to deliver meaningful change. The Equal Pay Coalition calls on the Ontario government to strengthen the *Pay Transparency Act* to ensure that it makes an advance in securing robust, effective protection for women's human rights.

The Bill has left too much to be introduced through regulations to be designed by the Minister of Labour. Leaving key obligations to regulations undercuts the strength of the Act and creates a democratic transparency deficit by cloaking key elements of the Act to private consultations.

## **TOP 8 PRIORITY AMENDMENTS TO STRENGTHEN PAY TRANSPARENCY**

### **Amendment #1: Extend the Act's Application to all employers with 10 or more employees**

The Bill has left the Act's application to be determined by regulations. Public announcements at the time of Bill 203's introduction indicated that pay transparency would initially apply only to the Ontario Public Service, and that following consultations would be extended to employers with 500 or more employees, and later to employers with 250 or more employees.

This undercuts the existing obligations in the *Human Rights Code*, *Employment Standards Act* and *Pay Equity Act*.

#### **To remedy this:**

- \* The new Act must encompass employers in both the public and private sectors.
- \* The Act must apply to employers contracted under provincial procurement.
- \* The new Act must apply to all private and public sector employers with more than 10 employees. This matches the posting the obligations under the *Pay Equity Act*. It would also keep pace with federal initiatives. In its 2018 Budget, the federal government announced that it would introduce

pay transparency legislation to apply to all public and private employers in federal jurisdiction with ten or more employees.

- \* The new Act must apply to all provincial vendors of record. Potential vendors are immediately disqualified if they do not file a timely mandatory pay transparency report.

**Amendment #2: Transparency Reporting Obligations must be intersectional and they must be set out in the Act, not regulations**

Existing equal pay laws establish three different kinds of entitlements which are reflected in pay structures:

1. The *Employment Standards Act* establishes the right to equal pay for equal work with distinction based on sex. Bill 148 extended this right to equal pay for equal work to ensure that part-time, casual and seasonal workers are paid the same as full-time workers doing substantially the same work; and to ensure that workers hired through temporary help agencies are paid the same as directly hired employees doing substantially the same work.
2. The *Pay Equity Act* guarantees equal pay for work of equal value by ensuring the jobs that are predominantly done by women are paid the same as jobs predominantly done by men that are of equal value in terms of the skill, effort, responsibility and working conditions.
3. The *Human Rights Code* guarantees that women are entitled to equal treatment without discrimination in all aspects of employment. For example, systemic discrimination that limits access to jobs, promotions, training and other aspects of employment will be reflected in gendered clustering of women in particular jobs, employment status and pay levels.

The Bill contained no specifics regarding the nature of information that must be disclosed in a pay transparency reports. This information is the core of the law and it must be set out in the Act itself rather than being left to legislation.

The scope of reporting obligations is not something that needs to be subject to further consultation with employers. The standard for compliance is already set out in existing law. The scope of reporting obligations must mirror the actual existing legal obligations to which employers are already bound – that is the intersecting obligations set out in the above three laws which guarantee discrimination-free pay.

**To remedy this:**

- \* The new Act must require that Pay Transparency reports that are **intersectional** in order to reflect these existing legal obligations that relate to discrimination-free pay.

- \* The new Act must specify the pay transparency reporting obligations, including compensation structure and wage grids by gender, job classification, and job status (full-time, part-time, casual, seasonal and temporary help agency workers).

The Equal Pay Coalition's 2017 [model Pay Transparency to Close the Gender Pay Gap Act](#) itemized the intersectional reporting requirements that would align with employer obligations under the *ESA*, *Pay Equity Act* and *Human Rights Code*.

### **Amendment #3: The Act Must Include Mandatory Timelines for Filing Pay Transparency Reports**

The Bill did not contain any mandatory time frame for filing pay transparency reports. This obligation must be contained in the Act itself, rather than being left to regulation so that there is clarity in the law and so that the obligation cannot be changed without public debate.

#### **To remedy this:**

- \* The new Act must require that Pay Transparency reports are filed annually.
- \* The Pay Transparency reports should be filed by 15 May of each year.

### **Amendment # 4: The Act Must Include a Strong Purpose Clause**

The Bill did not contain a purpose clause. A purpose clause is a very important part of any piece of legislation because it articulates the core principle which will be used to interpret the other provisions of the legislation.

This is particularly important in the Pay Transparency legislation because the purpose clause will help establish the relationship between that Act and the rights in the *ESA*, *Pay Equity Act* and *Human Rights Code*.

#### **To remedy this:**

- \* The new Act must include an explicit purpose clause:
  - ##(1) The purpose of this Act is to protect and promote women's fundamental right to receive pay free of sex discrimination by requiring employers to disclose information about the pay structure and wage grids in each establishment, disaggregated in the manner detailed in this Act.*
  - ##(2) Nothing in this Act abrogates from the obligations or enforcement provisions set out in the Employment Standards Act,*

2000, the Pay Equity Act or the Ontario Human Rights Code.

##(3) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of this Act, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act.

#### **Amendment #5: Pay Transparency should be enforced through the Pay Equity Office rather than the Labour Board**

The Bill proposes that the pay transparency obligations be enforced by the Ontario Labour Relations Board. We note that the OLRB does not have expertise in systemic wage discrimination which lies at the core of the reporting obligations in the legislation.

Meanwhile, the Pay Equity Office and Pay Equity Hearings Tribunal under the *Pay Equity Act* do have expertise in systemic wage discrimination. There is extensive jurisprudence under the *Pay Equity Act* regarding the obligation to disclose wage information and the Review Officers and Tribunal under the *Pay Equity Act* are very experienced in issuing orders to disclose necessary wage-related information. In addition, the *Pay Equity Act* contains anti-reprisal provisions and the Review Officers and Tribunal have an expedited process for addressing complaints about reprisal.

#### **To remedy this:**

- \* In the new Act, responsibility for enforcing the pay transparency obligations should be assigned to the Pay Equity Office Review Officers and Pay Equity Hearings Tribunal.
- \* As pay transparency is an enforcement tool designed to ensure compliance with fundamental human rights, it must be enforced by the state, in a manner that ensures public accountability for compliance with the rule of law. To ensure this public accountability, pay transparency obligations should be enforced exclusively through the Review Officers and Tribunal rather than through arbitration.

#### **Amendment #6: The Act Must Include Penalties for Failure to Comply**

The Bill contains no provisions setting out any penalties for failure to comply with the pay transparency obligations.

#### **To remedy this:**

- \* The new Act should include penalties by which an employer must pay a fine of \$50,000 for failure to file an annual pay transparency report.

- \* The new Act should also include penalties such that an employer who fails to file a pay transparency report must also pay a \$1,000 damage award to each employee in the establishment. This damage award is in recognition of the fact that the right to non-discriminatory pay is a fundamental human right and the failure to report on compliance with this fundamental law undermines an employee's human rights and undermines respect for the fundamental law of the province.

### **Amendment #7: Strengthen the Protection against Systemic Discrimination Caused by Reliance on Compensation History**

In a labour market such as Ontario's in which systemic wage discrimination is widespread, the discriminatory pay that women receive in one job is perpetuated in subsequent jobs as employers use compensation history as a benchmark for subsequent pay. This is one driver of the gender pay gap that impoverishes women throughout their careers. The Bill prohibits an employer from asking a job applicant about compensation history. However, the Bill undermines this prohibition by allowing employers to rely on compensation history if they obtain such information.

#### **To remedy this:**

- \* The new Act must clearly state that an employer cannot consider or rely on compensation history in any way which undermines a job applicant's right to receive pay that is free of discrimination.
- \* The new Act must ensure that the information disclosed through the Sunshine List is anonymized.

### **Amendment #8: The Act should have a Preamble to Establishes its Context**

The new Act can also include a Preamble (as does the *Human Rights Code* and the *Pay Equity Act*) which sets the context for its introduction as a means to address widespread non-compliance with existing law. This will both assist with the Act's interpretation and provide a context that will

*Whereas women's right to equality without discrimination is recognized in the Universal Declaration of Human Rights as proclaimed by the United Nations;*

*Whereas women's right to equality without discrimination in employment and women's right to equal pay for work of equal are recognized in the International Covenant on Economic Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Beijing Declaration and*

*Platform for Action; the Durban Declaration and Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance; the Convention on the Rights of Persons with Disabilities as proclaimed by the United Nations; and Convention 100 – Equal Remuneration for Work of Equal Value and Convention 111 – Discrimination in Employment and Occupation as proclaimed by the International Labour Organization; and*

**Whereas** *the gender pay gap continues to discriminate against and impoverish women in the province; and*

**Whereas** *it is desirable to take proactive action to enhance compliance with employer's existing legal obligations to deliver discrimination-free pay;*

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