



**Implement the *Pay Transparency Act, 2018*
to close the Gender Pay Gap**

**Equal Pay Coalition Submissions
to the Standing Committee on Social Policy on**

Bill 149, *Working for Workers Four Act, 2023*

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OVERVIEW

1. The Equal Pay Coalition unites more than 40 women's groups, trade unions, community groups and business organizations. Since it was formed in 1976, the Coalition has been at the forefront of advocating to close the gender pay gap through law reform, collective bargaining, and other policies and practices to advance women's economic security.
2. The Coalition continues to pursue its vision that Ontario must eliminate systemic discrimination against women.
3. In 2007, the Coalition released a concrete action plan and called on the Ontario government to take action so that Ontario achieves a 0% gender pay gap by 2025. Since 2018, the Ontario government's inaction has meant that the gender pay gap continues to impoverish women.
4. The Ontario government's own Pay Equity Commission states that "the gender wage gap persists in Ontario, no matter how it is measured" and "the gender wage gap is larger for racialized women, women who are newcomers, women with disabilities, Indigenous women, and trans women."¹
5. Ontario's Pay Equity Commission, relying on Statistics Canada Census data, reports the following the gender pay gaps based on annual earnings:
 - the gender pay gap for **First Nations, Inuk (Inuit) and Black women** is **42%**. This means they earn only \$0.58 for every dollar a man makes;
 - the gender pay gap for **women with disabilities** is **43%**, meaning they earn only \$0.57 for every dollar a non-disabled man makes;
 - the gender pay gap for **Arab women**, the lowest-paid women in the Ontario labour market, is a shocking **47%**, meaning they earn only \$0.53 for every dollar a man makes;
 - the **gender pay gap, on average**, is **32%**. This means Ontario women, on average, earn only \$0.68 for every dollar that a man makes.²
6. Our submissions focus specifically on Bill 149's purported "pay transparency"

¹ Ontario, Pay Equity Office, "The Gender Wage Gap: It's More Than You Think" (2023). Online at: <https://payequity.gov.on.ca/the-gender-wage-gap-its-more-than-you-think/>

² Ontario, Pay Equity Office, "The Gender Wage Gap: It's More Than You Think" (2023). Online at: <https://payequity.gov.on.ca/the-gender-wage-gap-its-more-than-you-think/>

provisions. **Bill 149 does not deliver pay transparency. Instead, it undermines the very real *Pay Transparency Act, 2018* which the Ontario government has blocked from taking effect since 2018. Moreover, it creates one of the weakest “pay transparency” laws in Canada.**

7. With the Orwellian title, the *Working for Workers’ Act Four, 2023* introduces a new Part III.1 to the *Employment Standards Act*. Section 8.2 of the Act states:

8.2 (1) 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.

(2) Subsection (1) *does not apply* to a publicly advertised job posting that meets such criteria *as may be prescribed*.

(3) For the purposes of subsection (1), *a range of expected compensation is subject to such conditions, limitations, restrictions or requirements as may be prescribed*.

8. Section 8.3 introduces alleged protections for workers with international experience:

8.3 (1) No employer who advertises a publicly advertised job posting shall include in the posting or in any associated application form any requirements related to Canadian experience.

(2) Subsection (1) does not apply to a publicly advertised job posting that meets such criteria as may be prescribed.

9. The Coalition notes that section 8.3 does not break new ground. It simply codifies what has been the state of the law for over a decade. As early as 2013, the Ontario Human Rights Commission’s *Policy on removing the “Canadian experience” barrier* identified that requiring job applicants to have Canadian experience was *prima facie* discriminatory and could only be used in extremely limited circumstances.³

10. The Coalition knows that strong legislation is required to eliminate sex

³ Ontario Human Rights Commission, *Policy on Removing the “Canadian experience” barrier* (1 February 2013), online at: <https://www.ohrc.on.ca/en/policy-removing-%E2%80%9Ccanadian-experience%E2%80%9D-barrier>

discrimination in pay. Employers do not voluntarily close the gender pay gap.

11. Bill 149's alleged pay transparency requirements do not provide a strong regulatory framework.

12. Bill 149 is simply a job posting requirement. It does not link the purpose of the posting requirement to eliminating wage discrimination. It does nothing to help workers identify if wages are free of discrimination; and it does nothing to hold employers accountable for discrimination in their pay structures.

13. Bill 149 does not require employers to disclose if the posted compensation reflects actual compensation or whether existing compensation practices are discriminatory.

14. In fact, in the United States, where employers in various states have been required to salary ranges in job postings as in Bill 149, research by business media and recruitment agencies has shown that

- as job posting provisions have been adopted by states, the rate at which *actual* salary is disclosed has *decreased* as employers seek to hide actual pay within broader “ranges”; and
- employers have responded to the legislation by posting extremely wide pay ranges for jobs, and have even *dropped* the minimum pay in the pay range while preserving, shielding and deepening discriminatory pay practices.

15. Since 2022, *Forbes*, *Bloomberg*, *Fortune* magazine, *The New York Times*, recruiting giant Indeed, and others have reported on how employers are adopting these avoidance techniques in response to the passage of weak job posting disclosure laws on which Bill 149 is modelled.⁴

16. Business magazine *Forbes* reported that

Companies are gaming pay transparency laws intended to bolster pay

⁴ See, for example, Jeff Green, Matthew Boyle and Bloomberg, “Employers are putting artificially low salaries on job postings to try to get around pay transparency laws” (19 December 2022) *Fortune*, online at: <https://fortune.com/2022/12/19/employers-posting-low-salary-ranges-pay-transparency/>; Cory Stahle, “Advertised US Salary Ranges Are Widening in Some Areas” (18 May 2023) Hiring Lab Economic Research by Indeed, online at: <https://www.hiringlab.org/2023/05/18/advertised-salary-ranges/>; Jack Kelly, “Companies Posting Wide Salary Ranges On Job Advertisements Are Making A Mockery Of Pay Transparency Laws” (6 June 2023), *Forbes*, online at: <https://www.forbes.com/sites/jackkelly/2023/06/06/companies-posting-wide-salary-ranges-on-job-advertisements-are-making-a-mockery-of-pay-transparency-laws/?sh=4e07294d4865>; H. Claire Brown, “A Job With a Fair Salary? What Pay Transparency Laws Are Revealing” (20 June 2023), *The New York Times*. Online at: <https://www.nytimes.com/2023/06/20/business/job-search-salary-ranges.html>.

equity in the workplace. ... Companies are making a mockery of the law by posting a huge range, such as \$50,000 to \$250,000. The significant spread makes it useless for job seekers.⁵

17. Beyond the fact that evidence was publicly available to the government about the weakness of the proposed provisions, Bill 149 weakens the law further by creating exemptions and allowing for restrictions and limitations on posting that will be made by regulation. Regulations are not brought before the Committee or the legislature for consideration so evade public scrutiny. The Ontario government will maintain the power to scale back and reduce even the most modest and ineffectual posting requirements.

18. The posting provisions also fail to give workers any meaningful remedy. If employers fail to include the information in their postings, there is no protection for workers who request the information.

19. The only conclusion that one can reach on reviewing Bill 149 is that these provisions are performative, for show and of no substantive meaning.

20. Bill 149 is nowhere close to a full pay transparency law.

21. In fact, Bill 149 is a significant retreat from the full *Pay Transparency Act* that the Coalition fought for and won in 2018. That legislation was scheduled to take effect as of January 1, 2019, but in November 2018 the Ford government amended the law's effective date so it would only come into effect on an undefined date proclaimed by the government. The *Pay Transparency Act* was not repealed, but it has also was no proclaimed in effect.

22. The government has effectively shelved the *Pay Transparency Act* that was passed by the legislature without bearing the political heat for undermining women's equality rights.

23. Had the Ford government allowed the legislation to come into effect, in May 2024 Ontario would have publicly posted employers' *fifth annual pay transparency reports* and workers would have access to significantly stronger protection, even regarding job postings.

24. Bill 149's posting provisions creates one of the weakest pay transparency laws in

⁵ *Forbes*, above note 4; *New York Times*, above note 4, reported that in response to California adopting job posting pay disclosure laws, Netflix put out postings which "show pay ranges from \$60,000 to \$290,000 for a role in consumer products and \$195,000 to \$510,000 for a senior manager in talent and recruiting".

Canada. Bill 149 significantly undercuts the rights enacted in Ontario's *Pay Transparency Act, 2018*.

25. The Equal Pay Coalition calls for the immediate implementation of the *Pay Transparency Act, 2018* in place of the proposed s. 8.2.

26. In addition, the Equal Pay Coalition adopts the detailed and thorough submissions of the Workers' Action Centre/Parkdale Legal Services regarding the other amendments proposed in Bill 149.

WHAT IS PAY TRANSPARENCY?

27. Pay transparency is a critical tool that has been adopted internationally specifically to address the persistence of gender discrimination in pay. Pay transparency has been designed and adopted specifically to ensure workers have the information required to determine if they are receiving discrimination-free pay, to reinforce employer accountability for closing the gender pay gap and to strengthen enforcement of existing legal obligations to deliver discrimination-free pay.

28. For literally generations, it has been against the law in Ontario to discriminate against women in employment. Women in Ontario have been entitled to equal pay for equal work since the 1951 *Female Employees' Fair Remuneration Act*. They have been guaranteed equal rights in employment without discrimination based on sex under the *Human Rights Code* since 1962. They have been protected by equal pay provisions under the *Employment Standards Act* since 1968. And they have been entitled to equal pay for work of equal value under the *Pay Equity Act* since 1987.

29. Despite all of these laws, the gender pay gap persists because of systemic sex discrimination in employment. Women continue to be paid less when doing the same work as men. They continue to be paid less when doing work of equal value to men. They continue to face systemic sex discrimination in hiring and access to full-time work, training, mentoring and promotions. Women continue to predominate in part-time, temporary, casual, seasonal, and temporary agency work where they continue to face pay discrimination.

30. Because of this systemic sex discrimination women continue to be paid average annual earnings that are significantly lower than men's. In addition to the Ontario Pay Equity Commission's statistics noted above, Statistics Canada has recorded that in 469 out of the 500 occupations it tracks, men are paid more than women.⁶ The gender pay

⁶ Kate McInturff, "Women's Work: What is it worth to you?" (2016) Canadian Centre for Policy Alternatives

gap exists at all income levels, at all education levels, at all age levels.

31. All employers in Ontario have had a legal obligation to deliver discrimination-free pay since at least the 1960s. But employers continue to flout the law by keeping their pay practices secret.

32. Under the existing *Employment Standards Act* and the *Human Rights Code*, individual women must come forward to file complaints if they are experiencing sex discrimination in pay. Enforcement of the *Employment Standards Act* equal pay provisions has been notoriously weak for decades; with very few cases have ever been adjudicated. The lack of claims reflects the difficulty women face accessing pay information in a context where non-unionized workers can be terminated for asking about or sharing pay information.

33. As reported by Ontario's Pay Equity Office, 54% of employers in the province have gender pay gaps contrary to the *Pay Equity Act* even though pay equity has been the law since 1987. In 2016 the provincial Gender Wage Gap Steering Committee reported that the pay gap has not closed in thirty years.⁷

34. But we know that the gender pay gap is not an individual problem; it is a systemic problem. We know that systemic discrimination persists because of entrenched practices and attitudes. The problem is not isolated. It can persist because of pay secrecy.

35. This persistent non-compliance makes a mockery of women's fundamental right to equality in the workplace. Public accountability is needed to ensure that employers deliver on their fundamental human rights obligations. Without pay transparency, women cannot enforce their rights to discrimination-free pay.

36. 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. It is baseline legal obligation for every employer to ensure they deliver non-discriminatory pay and working conditions.

37. Pay transparency laws promote women's economic equality because they ensure that women have access to the information they need to enforce their right to equal pay for equal work and their right to pay equity. Women can't enforce their legal right to equal

⁷ *Final Report and Recommendations of the Gender Wage Gap Strategy Steering Committee, prepared for the Minister of Labour and Minister Responsible for Women's Issues* (Ontario, June 2016) online at: https://files.ontario.ca/7198_mol_gwg_finalreport_eng_wa_08f_v2_1.pdf

pay for equal work if they don't know what other workers in the workplace are earning.

38. Pay transparency is a tool to enforce employers' compliance with existing laws. Pay transparency buttresses enforcement of the existing human rights laws that can help close the gender pay gap. Pay transparency promotes human rights compliance by creating accountability for non-discriminatory pay.

39. Pay transparency laws have been adopted because without a significant intervention to disrupt these patterns of systemic discrimination, the gap will not close. Employers have had literally generations to eliminate the gender pay gaps in their workplaces. Pay transparency laws effectively tell employers that "Time's Up" – Show Us the Money. Employers must now positively demonstrate that they are complying with the multitude of laws that guarantee women discrimination-free pay.

40. Real, robust pay transparency is needed; not the window dressing that is offered in Bill 149.

A PAY TRANSPARENCY CHECKLIST FOR THE STANDING COMMITTEE'S ANALYSIS.

41. The Coalition presents the key principles and actual provisions of a robust pay transparency scheme which should inform the Standing Committee's analysis of Bill 149's section 8.2. A review this checklist demonstrates that Bill 149's new job posting provisions will do little to close the gender pay gap. (**Appendix A below**)

42. 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. Bill 149 does not correct this power imbalance and does not offer workers the tools to shine a spotlight on the actual pay structures of a workplace.

43. Bill 149 will continue to 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.

44. As a starting point, meaningful pay transparency provisions put 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*. Employers' legal obligations are *proactive* under *all* of those existing laws; that means they are required to ensure compliance prior to and even in the absence of any complaints. 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.

45. Pay transparency laws require that employers publicly disclose information about:

- the wage structure in their workplaces;
- the gender wage gaps in their wage structure;
- the gender distribution across income levels at the workplace;
- the gender distribution across job security categories (full-time, part-time, casual, seasonal, hired through temporary help agencies, etc.); and
- wage information in job postings.

46. Through these mandatory public disclosures, pay transparency laws can reveal where:

- women and men are paid differently for the same work;
- women are underpaid because their work is undervalued; and
- women are concentrated in lower-paid and precarious work.

47. Pay transparency laws also

- proactively allow workers to ask for and receive information on the wage structure;
- allow workers to share wage and salary information;
- prohibit employers from disciplining or imposing reprisals on workers for seeking and sharing wage information; and
- prohibit employers from asking job applicants about their compensation history.

48. The provisions in Bill 149 do none of this. Bill 149 does not include proactive employer reporting or proactive employer audits of their existing pay structures. It does not give workers the right to know actual pay practices and does not protect workers from discipline or termination for seeking or sharing wage information.

Bill 149 puts Ontario behind other jurisdictions.

49. Pay Transparency is the global best practice and Ontario is playing catch-up.

50. 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. Numerous countries have introduced pay transparency legislation, including Iceland, Denmark, Belgium and the UK. Australia has also implemented pay transparency measures.

51. Since 2017, the UN Women-led Equal Pay International Coalition (EPIC) identified pay transparency as an important tool in closing the gender pay gap. Canada plays a leading role in EPIC as a member of EPC's Steering Committee. The fact that Ontario lags far behind this international standard is shameful.

52. In September 2022, the European Community's Equal Pay Day, the International Labour Organization released a report detailing the various best practices for pay transparency including the observation that pay transparency reports are one of the most commonly implemented measures at the country level.”⁸ However, this government has ignored those best practices and blocked the existing *Pay Transparency Act, 2018* from taking effect even though it applies those international best practices.

53. Apart from lagging behind international standards, Ontario is not keeping pace with the federal government's pay disclosure requirements under the federal *Pay Transparency* regulation. In February 2024, the federal government released a new and important tool to help eliminate pay discrimination. The “Equivision tool” <https://equivision.services.gc.ca/> is an online database that the public can search to see the pay gaps and hiring practices of any federally regulated private or public sector employers. Not only does it identify gender pay gaps; it identifies pay gaps for all four groups identified in the *Employment Equity Act*: women, Indigenous workers, racialized workers, and workers with disabilities. The Coalition highly recommends that the Committee study this new pay transparency website in detail and adopt the reporting practices that enable its reproduction for provincially regulated employers.

Concluding Comments

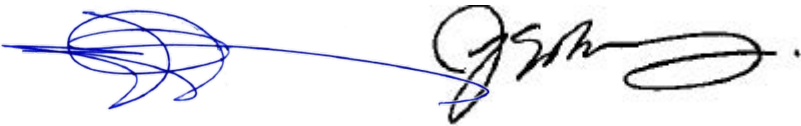
54. The Equal Pay Coalition calls on the Ontario government to immediately implement the *Pay Transparency Act, 2018* to advance effective protection for women's human rights and to hold employers publicly accountable for complying with their existing, mandatory legal obligations to deliver discrimination-free pay.

55. Bill 149 does not advance those protections. It leaves women vulnerable to employers low-balling their pay while the fig-leaf of Bill 149 shields their actual discriminatory pay practices from view.

⁸ International Labour Organization: Pay transparency legislation: Implications for employers' and workers' organizations, Geneva 2022 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_849209.pdf

56. We need bold action to close the gender pay gap. Women have waited generations to close the gender pay gap. Women are done waiting. Show us the money. Implement the *Pay Transparency Act, 2018* now.

RESPECTFULLY SUBMITTED,

Handwritten signatures in blue ink. The first signature is a stylized, scribbled mark. The second signature is more legible, appearing to read 'J. Borowy'.

FAY FARADAY and JAN BOROWY

**Co-Chairs of the Equal Pay Coalition
12 February 2024**

Appendix A

A Checklist for Pay Transparency



Bill 149 does not pass to be true pay transparency legislation.

Key elements to look for in Pay Transparency legislation	Present or missing in Bil 149
1. Is there a clear purpose statement linking pay transparency to the elimination of discrimination in pay?	<i>Missing</i>
2. Does the law apply to both private-sector and public-sector employers?	<i>Missing</i>
3. Does the law apply to all employers with 10 or more workers to ensure it is consistent with the Ontario <i>Pay Equity Act</i> ?	<i>Missing</i>
4. Does the law apply to require pay transparency for all jobs at all income levels in the workplace?	<i>Missing</i>
5. Does the law require an annual report to the Ministry of Labour detailing wage structure, gender pay gaps, gender distribution across income levels, and gender distribution by job security?	<i>missing</i>
6. Does the law require that employers' annual pay transparency reports be publicly posted and accessible on a government website?	<i>missing</i>
7. Does the law require that employers provide the annual pay transparency report to all workers at the same time that it is filed with the Ministry of Labour?	<i>missing</i>
8. Does the law prohibit employers from asking job applicants about their compensation history?	<i>missing</i>
9. Does the law require employers to track and report pay gaps in hourly wages, median earnings and annual earnings by gender, race, disability and other key human rights grounds?	<i>missing</i>
10. Does the law require employers to track and report pay gaps in total compensation, including incentive payments, allowances, profit-sharing, bonuses, etc.?	<i>missing</i>
11. Does the require employers to track and report pay gaps by actual job classifications, particularly jobs dominated by women?	<i>missing</i>
12. Does the law require employers to track and report gender and other human rights pay gaps based on job status (full-time, part-time, casual, seasonal or hired through temporary help agencies)?	<i>missing</i>
13. Does the law require that the actual pay for all jobs (annual salary and pay per hour equivalent) be publicly available to current and prospective employees?	<i>missing</i>
14. Does the law protect workers' right to ask for and receive from the employer information about the wage structure and pay policies?	<i>missing</i>

15. Does the law protect workers' right to share pay information with other workers?	<i>missing</i>
16. Does the law prohibit employers from disciplining or imposing reprisals on workers for seeking and sharing wage information?	<i>missing</i>
17. Does the law empower Ministry of Labour inspectors to require employers to disclose records relating to pay and review pay structures for gender inequality and other human rights inequalities?	<i>missing</i>
18. Does the law give workers the right to file complaints to enforce their right to receive annual pay transparency reports if employers fail to file the mandatory pay transparency reports with the Ministry of Labour or provide them to workers?	<i>missing</i>
19. Does the law impose significant financial penalties on employers who fail to comply with the pay transparency law?	<i>missing</i>