



September 20, 2024

Ministry of Labour, Immigration, Training and Skills Development
Employment, Labour and Corporate Policy Branch
14th Floor, 400 University Avenue
Toronto, Ontario
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By email: ESA-Regs-Consultation@ontario.ca

RE: Submission to the consultation on Bill 190, Working For Workers Act: Pay Transparency and Use of AI

To, Employment, Labour and Corporate Policy Branch

We are writing to share our feedback on the proposed regulation on Bill 190, Working for Workers Act: Pay Transparency and Use of AI, and to reiterate our support for both.

ONN is the independent nonprofit network for the 58,000 nonprofits and charities in Ontario, focused on policy, advocacy and services to strengthen the sector as a key pillar of our society and economy. We work to create a public policy environment that allows nonprofits to thrive. We engage our network of diverse nonprofit organizations across Ontario to work together on issues affecting the sector and channel the voices of our network to government, funders, and other stakeholders.

Introduction

We support the full implementation of disclosing compensation or salary ranges, and use of AI in all job postings. Many nonprofits are already disclosing compensation and/or salary ranges in their job postings, and currently, it is ONN's policy to include salaries in all job postings. ONN also mandates that any nonprofit posting a position on our job board, Connect Jobs, include salary ranges; annually over 400 jobs are posted on this site. As AI becomes an integral part of the hiring process for many organizations, it is important that workers are clear on regulations concerning the protection of personal data, and guarantee that the hiring process is free of discrimination.

ONN notes that the current legislation is not pay transparency legislation in its true form, and the way in which it is internationally conceptualized and practiced. ONN supports the note from [Ontario's Equal Pay Coalition](#) in their earlier submission that the Working for Workers Act does not deliver pay transparency but instead is specifically about disclosing compensation and pay ranges in job postings. Moreover, the posting provisions fail to give applicants any meaningful remedy. If employers fail to include the information in their postings, there is no protection for applicants who request the information. Ontario's legislation lags behind all other provinces proposing and enacting true pay transparency legislation across Canada.

Questions and answers

1. In May 2024, Bill 194, Strengthening Cyber Security and Building Trust in the Public Sector Act, 2024 was introduced. Bill 194 proposes the following definition:

“Artificial intelligence” means a machine-based system that, for explicit or implicit objectives, infers from the input it receives in order to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments.

It is proposed that the definition of AI for the purpose of the ESA would be based on the above definition. Do you agree with the proposed definition? Why or why not?

ONN supports the use of the definition of AI used in Bill 194 for the purpose of the ESA as it is the OECD definition which has been further adopted by international, national, and regional bodies. As AI is ever-evolving, please see below some considerations particularly using this definition for the Employment Standards Act that may be tackled in regulatory language and implementation:

- The OECD definition mentions "producing outputs" which defines AI in a limited manner, as a decision-making or content-generating tool. It does not account for the way in which AI is learning, problem-solving, creative, and at times autonomous.
- The OECD definition focuses on outcomes, and so defines AI as being goal oriented. Consideration needs to be made for how AI will continue to evolve, particularly as "creativity" and "autonomous," which relates to the use of AI agents and replicating workflows and such.
- Defining AI as just another product is a dangerous assumption because it can lead Ontarians, policy-makers, and decision-makers to think that regulations and legislations relevant to AI are one in the same as other products.

2. Proposed definition of “publicly advertised job posting”:

“Publicly advertised job posting” means an external job posting that an employer advertises to the general public in any manner. This definition does not include recruitment campaigns, general help wanted signs or positions that are only advertised to existing employees of the employer.

Do you agree with the proposed definition? Why or why not? Should the definition be narrowed to electronic forums only?

ONN proposes that the definition of publicly advertised job postings include postings advertised to existing employees of the employer, in order to ensure a transparent and fair process throughout hiring, rather than a two-tiered system. The rationale for existing employees to have limited access to information than applicants is unclear.

3. Should postings that are for positions with higher compensation not be required to include expected compensation or a range of expected compensation? If so, is \$200,000 a reasonable threshold for an exemption?

ONN supports the full adoption of disclosing compensation or pay ranges in job postings for all positions at all pay levels, without any exemptions, as it benefits both employers and workers in Ontario.

As the [International Labour Organization \(ILO\) found](#), pay transparency policies help reveal pay disparities between groups of people along many demographic lines such as gender, race, and sexual orientation, and pinpoint their underlying causes. According to the ILO report and various other studies on the effectiveness of pay transparency, workers, particularly women and those from equity-deserving communities, depend on pay transparency to make it easier for them to choose which jobs to apply for, ensure they are being compensated fairly, and as a means to challenge potential pay discrimination. For employers, it minimizes the disconnect between salary expectations and what companies are truly prepared to offer, and increases employee satisfaction, saving employers valuable time and money in the recruitment process. Also, pay transparency policies help identify and address pay discrimination that might otherwise negatively affect the functioning of the organization and their reputation. Lack of transparency puts employers at risk of hiring someone who is likely to leave if the pay does not adequately reflect their worth.

The economic and social outcomes of disclosing compensation or pay ranges in job postings will only emerge for both employers and workers if no position is exempt, as any exemptions will nullify the transparency and related outcomes in the first place. There is not a pay level or position where pay transparency is not helpful to both the employer and employee. Arguably it is most needed in higher positions as that is where fair and transparent compensation is at the most risk for the applicant, and the risk in discrepancies for the employer.

Quebec, British Columbia, P.E.I, Nova Scotia, Newfoundland and Labrador have now all enacted or proposed pay transparency and/or pay equity legislation where no province has exempted disclosure of pay ranges in postings for certain positions.

4. Is a limit of \$40,000 on the expected range of compensation reasonable? If not, what should the limit on the range be?

The economic and social outcomes of disclosing pay ranges in job postings will only emerge for both employers and workers if the salary ranges are reasonable. Reasonable ranges support wage equality rather than further exacerbating wage inequality, as too broad ranges will nullify the transparency and related outcomes in the first place.

For this reason we propose \$20,000 as a reasonable limit as it will ensure a more efficient hiring process for both applicants and employers. Job seekers will have an easier time identifying whether they are an appropriate candidate, and whether the position and its compensation are

the right fit while minimizing the risk of wage inequalities appearing throughout the organization in the future. For example, a pay range of \$40,000-\$60,000 provides much more information to the job seeker, and the intentions of the employer, than that of \$40,000-\$80,000.

A limit of \$20,000 also captures all sizes of organizations. This is because larger organizations are more likely to have many pay ranges in their internal wage grid, and even though the mid to smaller size organizations are more likely to have fewer pay ranges, they are also more likely to have more narrow ranges. Moreover, this limit allows for an adequate minimum, midpoint, and maximum that can account for various levels of experience, expertise, and raises. Ideally the disclosure of pay ranges in job postings should closely align, if not mirror, internal organizational pay bands. ONN's proposed limit mirrors best practices for how organizations should create internal pay bands.

Broad pay ranges, such as the suggested \$40,000 can backfire on employers as it can signal untrustworthiness as the organization and/or regulator might be perceived as trying to curtail the spirit of disclosing pay ranges in job postings.

5. To remove an initial barrier to employment for newcomers entering the workforce and fill labour shortages, employers who advertise a publicly advertised job posting would be prohibited from including in the posting or in any associated application form any requirements related to Canadian experience. There is regulation-making authority to exempt postings that meet specified criteria. Should there be any exceptions?

While already prohibited by the Ontario Human Rights Code, ONN supports the province's legislated mechanism to prohibit including Canadian work experience requirements in job postings or applications without any exceptions. In turn ONN proposes the regulation-making authority consider also prohibiting postings requiring disclosure of what country applicants have gained their work experience in. More recently some employers are requiring applicants to disclose what country they have gained their work experience in. For the same reasons as requiring applicants to have Canadian work experience, this practice is harmful and unfair for newcomers, and subjects applicants to discriminatory vetting procedures.

The onus of overcoming systemic barriers to employment should not be put on newcomers and immigrants themselves. We support the calls of subject matter expertises on this topic such as [Ontario Council of Agencies serving Immigrants](#) and [TRIEC](#).

6. Do you think that a prohibition on requirements related to Canadian experience in job postings and application forms would help to make Ontario a more attractive place for newcomers by lowering barriers to entry? Why or why not?

ONN believes that excluding Canadian work experience requirements in job postings and applications is a first step towards providing fair employment opportunities for newcomers and immigrants in Ontario, and thus stimulating Ontario's economy. We support the calls of subject

matter expertises on this topic such as [Ontario Council of Agencies serving Immigrants](#) and [TRIEC](#).

7. Education and outreach would be important to raise awareness and understanding about this prohibition across newcomer communities and employers. Do you have any comments to provide about the approach that should be taken and where the ministry should focus its outreach?

ONN proposes the province leverage nonprofits' expertise in communities - particularly in serving and supporting newcomers and immigrants, local infrastructure, and community-centred missions to raise awareness and understanding about this prohibition across newcomer communities and employers. With adequate provincial support, nonprofits can not only reach the demographic group but also ensure the message is delivered in a culturally appropriate manner. Nonprofits are already a significant portion of Ontario's employment and training ecosystem, making this a natural extension of their work.

8. Should there be exceptions to the requirement to disclose use of AI? If so, for what criteria?

ONN supports the disclosure of AI use in recruitment processes for all employers of all sectors, budgets, and sizes, and for all types of jobs. Disclosure will only work if everyone does it. Any exemptions will only defeat the purpose of the legislation, and create an uneven playing field for both workers and employers across sectors and jobs during a generational labour shortage in Ontario. Disclosure of AI use in recruitment processes is critical for all employers because technological biases transcend AI tools and thus employers. Moreover, exemptions and/or regulations that differ from other similar legislation that employers have to comply with, such as Pay Equity, will create more administrative burden for organizations, especially nonprofits.

ONN proposes that the regulation-making authority deeply consider building regulatory safeguards for AI use in recruitment processes to protect applicants from discriminatory hiring practices.

In the United States there has been a 50 per cent increase in employee discrimination lawsuit filings between 2022 and 2023, and increasingly those cases are related to AI discrimination. Class action lawyers have outlined that AI employment discrimination cases are anticipated to steadily rise as more companies implement AI in their hiring processes. This is because the algorithms underpinning AI encompass the biases and values of its builders, and those who developed the data sets the algorithms use. When those builders are from a homogenous group and/or incentivised to build the system for for-profits and not necessarily fairness, the technology can profoundly perpetuate and deepen inequities. It is imperative that the decisions made by AI be easily explainable - that is, which factors, features, and data sets are used in decision-making, and which ones are not and why - especially when the decisions are about people. Any negative impacts and harm will disproportionately be felt by people from equity-deserving communities. This includes women, youth, and seniors, Black and Indigenous communities, newcomer and other racialized communities, people with disabilities, low-income individuals and families, unhoused people, people from the 2SLGBTQIA+ community, and those that do not have access to

technology or the internet, amongst others. Other jurisdictions are not only grappling with similar issues, but also are developing and implementing public policy to combat the same.

For example, in 2021 the City of New York's Department of Consumer and Worker Protection implemented a policy that mandates all employers using AI tools in their hiring process to subject the tools to a robust "bias audit" that demonstrates that the technology used is free of all discriminatory bias. To combat potential discrimination within AI hiring tools, ONN recommends that the province follow the 2021 policy laid out by the City of New York and build on it by ensuring:

- The "bias audit" protects all workers of diverse backgrounds, not just based on race and gender.
- The "bias audit" takes place within one year of the use of the tool and that it be performed by an independent third-party.
- The results of the audit be made publicly available, or at the very minimum to the government's regulatory body for enforcement of regulations.

Similar regulations in Ontario will protect employers from complicated legal issues that waste time and money, and ensure that the best possible candidates are being recruited for their jobs. At the same time, workers will be provided with assurances that they are not being excluded from jobs due to technological biases and make informed decisions in their job search. The province would not be starting from scratch to build such safeguards as it can rely on and utilize its Trustworthy AI Framework.

13. Is 30 calendar days a reasonable amount of time for an employer to be required to follow up with an interviewee? If not, how long does it typically take after interviews are completed for a hiring decision to be made?

ONN proposes that the minimum threshold for an employer to follow up with an interviewee be 30 calendar days, without any exceptions. Ontario's nonprofit sector is made up of many small to midsize nonprofits who often lack human resource capacity with most of the same responsibilities falling onto one or two staff responsible for many other operational and programmatic tasks.

After the application process closes, nonprofits typically hold two rounds of interviews that can take anywhere between one to three weeks, depending on the availability of interviewees. Moreover, organizations often wait to sign an offer letter, which itself can take some time if there are contract negotiations, with the chosen candidate before informing interviewees the results of the job recruitment process. This entire process can take up to 30 calendar days which is why we propose that as a minimum threshold.

14. The bill would allow for the manner the information is to be provided to be prescribed. Should the manner be prescribed in regulation?

Potential methods for communication of information could include:

- Telephone call

- Email message
- Text message

Email message including a link to the status of the recruitment process. Are there any other methods that should be captured?

ONN proposes that the bill prescribes email message as the manner for informing job applicants who interview for a publicly advertised job posting about updates on the recruitment process. Email messages are the most effective method as they can be drafted by one person, sent by another, are fast, and can be sent to multiple job applicants at a time. Email messages do not add extra burden on organizations while also valuing the individuals who put in the time and effort to interview to not be left in limbo without any knowledge of the outcome. Most nonprofits, including ONN, opt to email first rounder interviewees and call second round interviewees to provide updates on the recruitment process.

15. Should there be an exception to the requirement to respond to interviewees for employers with less than 25 employees?

ONN proposes that there be no exceptions to the requirement to respond to interviewees for employers with less than 25 employees given that email messages are quick, efficient, and thus low burden on organizations but offer high value to nonprofits.

16. The bill would allow for a definition of "interview". Proposed definition:

- A conversation and/or discussion between the applicant who has applied to a publicly advertised job posting and the interviewer(s);
- Where questions are asked, and answers are given to assess an applicant's suitability for a job; and
- The interviewer(s) would be the employer or representative of the employer.

Do you agree with the proposed definition?

ONN agrees with the proposed definition of interview.

Conclusion

ONN strongly supports the disclosure of compensation or pay ranges and the use of AI in recruitment processes. Our recommendations benefit both applicants and employers. They reflect the reality of nonprofit employers across the province and various subsectors, as well as budget sizes and number of employees while also ensuring decent work for applicants. We emphasize no exemptions to disclosure for fair and transparent recruitment. Furthermore, we advocate for clear regulations on AI use in recruitment to prevent discrimination and bias.

As a sector that employs and serves diverse communities, nonprofits play a key role in advancing these issues. By adopting these measures, Ontario can create a more equitable, transparent, and

fair labour market. We look forward to ongoing collaboration to strengthen these regulations and enhance the nonprofit sector's contribution to the province's economy and social fabric.

Sincerely

A handwritten signature in black ink, appearing to read 'P. Sandhu', followed by a period.

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