



Ministry of Labour, Immigration, Training and Skills Development  
14th Floor, 400 University Avenue  
Toronto, Ontario M7A 1T7

Date February 7, 2024

**RE: Proposed amendments to the Employment Standards Act, 2000 (ESA), if Bill 149, the Working for Workers Four Act, 2023, passes.**

To the Ministry of Labour, Training and Skills Development,

Thank you for the opportunity to comment on the proposed changes to the Employment Standards Act that would require employers to post a compensation rate or range with every job posting and disclose the use of artificial intelligence (AI) during the recruitment process.

ONN is the independent network for the 58,000 nonprofits in Ontario, focused on [policy](#), [advocacy](#), and [services](#) to strengthen Ontario's nonprofit 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 governments, funders, and other stakeholders.

**Summary**

ONN supports pay transparency and disclosure of AI use in recruitment processes in job postings, as it benefits both employers and workers in Ontario.

According to various 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 to and ensure they are being compensated fairly.

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. Many nonprofits are already practicing pay transparency in their job postings, and currently, it is ONN's policy to include salaries in all job postings. We also mandate that any nonprofit posting a position on our job board includes salary ranges; annually over 400 jobs are posted on our [Connect Jobs Board](#).

As AI becomes an integral part of the hiring process for many organizations, it is important that workers be clear on regulations concerning the protection of personal data and guarantees that the hiring process is free of discrimination.

In order to effectively meet the policy intent behind this legislation, to ensure workers are compensated fairly and protected while employers save time and money in recruiting top talent, we urge you to consider the following regulatory recommendations:

- 1. Ensure no employers or jobs are exempt from both pay transparency and disclosing AI use in recruitment processes in job postings.**
- 2. Require pay transparency with reasonable salary ranges.**
- 3. Use regulations to ensure Ontario's Pay Transparency legislation is the best in Canada.**
- 4. Build regulatory safeguards for AI use in recruitment processes to protect workers from discriminatory hiring practices.**
- 5. Build regulatory safeguards to protect Ontarians' personal data when AI is used in recruitment practices.**
- 6. Create reporting requirements around AI tools used during the hiring process.**

#### Detailed Recommendations

- 1. Ensure no employers or jobs are exempt from both pay transparency and disclosing AI use in recruitment processes in job postings.**

Pay Transparency and disclosing AI use in recruitment processes only works if everyone does it. For this reason regulations must apply to public and private sector employers of all budgets and sizes and for all types of jobs. Any exemptions will only defeat the purpose of the legislation and not create an even playing field for both workers and employers across sectors and jobs during a generational labour shortage in Ontario. Pay transparency is particularly critical in those sectors, organizations, and jobs where there is more likely to be wage inequalities, such as in higher-paying jobs and/or male-dominated jobs/sectors such as manufacturing and construction. 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 and organizations have to comply with, such as Pay Equity, will create more administrative burden for organizations, including nonprofits.

- 2. Require pay transparency with reasonable salary ranges.**

According to [Schedule 2](#) of the legislation "a range of expected compensation is subject to such conditions, limitations, restrictions or requirements as *may be* prescribed." Pay transparency will only work for both employers and workers if the salary ranges are reasonable, that is the range supports wage equality rather than further exacerbates it or nullifies the transparency in the first place. Reasonable ranges also help job seekers have an easier time identifying whether they are an appropriate candidate and whether the position and its compensation are the right fit. This is a more efficient hiring process for

both applicants and employers, as well as minimizes the risk of wage inequalities appearing throughout the organization in the future.

### **3. Use regulations to ensure Ontario's Pay Transparency legislation is the best in Canada.**

We commend the government's efforts to provide job seekers with better information on salaries and generally encourage more equitable hiring and employment processes. However, pay transparency in job postings is just the first step, as was demonstrated by *Ontario's Pay Transparency Act, 2018* which the province has not repealed to date. The 2018 Act included further mechanisms to directly eliminate wage discrimination while also holding employers accountable in areas concerning reprisal and reporting.

The province's legislation can be bolstered with additional regulations from the 2018 Act such as:

- Including a clear purpose statement linking pay transparency to the elimination of discrimination in pay
- Protecting workers' right to share pay information with other workers
- Prohibiting employers from asking job applicants about their compensation history
- Requiring employers to report and post their pay systems and practices including wage and pay structures, any merit pay systems, the occupation, and the nature of the employment relationship (such as part-time, contract, temporary agency).

Strengthening and expanding regulations for Bill 149 will only better ensure that Ontarian's workers are compensated fairly in Canada while also saving government time and resources with future discrimination cases brought forth as a result of weak policy that does not fully protect workers.

### **4. Build regulatory safeguards for AI use in recruitment processes to protect workers 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.<sup>1</sup> 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. In the same vein, it is imperative that the decisions made by AI be easily

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<sup>1</sup>Thomas, Stacy. "The EEOC Is Busy": Class Action Employment Lawyers Warn HR." *HRD America*, HRD America, 19 Oct. 2023, [www.hcamag.com/us/specialization/diversity-inclusion/the-eeoc-is-busy-class-action-employment-lawyers-warn-hr/463772](http://www.hcamag.com/us/specialization/diversity-inclusion/the-eeoc-is-busy-class-action-employment-lawyers-warn-hr/463772).

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 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](#).

##### **5. Build regulatory safeguards to protect Ontarians personal data when AI is used in recruitment practices.**

As AI becomes more readily used during hiring processes, it is vital that the government consider the repercussions of employers collecting applicant data and inputting it into open-access AI tools. Many of these tools, such as ChatGBT, are "free" to use in exchange for inputting data and relinquishing ownership of it and privacy controls over it. These tools may lead to invasive profiling and eventually to the [erosion of personal autonomy](#) for

applicants. Personal data should not be allowed to be inputted into an AI tool unless the employer can guarantee that applicant's personal information will not be misused for purposes beyond their intended use. Baseline safeguards such as this should be built into the regulations.

**6. Create reporting requirements around AI tools used during the hiring process.**

In order to ensure that there are no biases in the AI tools used by employers and mitigate risks for both employers and workers, regulations must include some sort of reporting requirements that mandate employers report any potential bias in AI tools used for recruitment purposes. Such reporting requirements will ensure that employers are held responsible for taking steps towards eliminating discrimination in all of their hiring practices. At the same time, we are conscious of the reporting burdens on particularly the small-medium sized employers and would like to ensure that new reporting requirements are reasonable in the following ways:

- Mandate that all employers with 50 or more employees publish the results of the bias audit publicly within a year of using the AI tool.
- The same prescribed reporting period should apply to all employers.
- Mandate that the results of this audit be publicly available on the employer's website in a clear and conspicuous manner in perpetuity.
- Empower the Ministry of Labour inspectors to deliver fines to employers who violate the bias audit reporting requirements similar to those laid out for [New York City Local Law 144](#).

**Conclusion**

Pay Transparency, as well as the introduction of AI tools in recruitment processes, have the potential to boost employee morale, organizational loyalty, and create engaging work cultures; they just need enabling government policy and enforcement to meet their intended outcomes. With the right regulations, Ontario can lead the way to making pay transparency legislation that works for its workers. It also has the opportunity to develop forward-thinking policy on AI use that welcomes the tool while simultaneously protecting workers from discrimination and their right to data privacy. As the Government considers how to move forward on these recommendations, ONN would be pleased to convene the nonprofit sector to continue these discussions.

Thank you for your serious consideration.

Sincerely,

Cathy Taylor, Executive Director



Ontario Nonprofit Network