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The Potential Impact of Ontario's Pay Transparency Act on Executive Jobs and Beyond

September 2018

Bill 3, Pay Transparency Act, 2018 was enacted by the previous provincial government on April 26, 2018. No regulations have been issued under the Act, either before or since the June election.

It is important to note that, to date, the new provincial government has not publicly commented on or issued any directives under the Pay Transparency Act to the best of our knowledge. For the purposes of this bulletin, we assume that the requirements under the Act will come into effect commencing January 1, 2019 as stated in the Act and that employers need to consider the potential implications now.

The stated purpose of the Act is to promote gender equality in compensation and to remove gender based and other biases in employment, as part of a broader strategy to close the gender wage gap in Ontario. To date, Ontario is the only province in Canada to establish comprehensive legislation around pay transparency for all employers. However, similar pay equity and pay transparency laws currently exist in other countries including Australia, Iceland, Germany, and the United Kingdom, in addition to prospective federal legislation expected later this year.

The Act will apply to all employers, including private sector, public sector, and non-profit organizations as defined by the Employment Standards Act, 2000. There will be additional reporting requirements for organizations with 100 or more employees.

Pay Disclosure Requirements

The Act requires every employer who publicly posts a job in any manner to include information about the expected compensation for the position or the range of expected compensation. Compensation for this purpose includes all payments and benefits that entitle a person to be paid a fixed or ascertainable amount. Interestingly, the Act does *not* require compensation information to be provided if the position is only being advertised internally to *existing* employees.

Reporting Requirements

The Act includes rules governing annual pay transparency reporting, which will have to be filed commencing not later than May 15, 2020 for employers with 250 or more employees and May 15, 2021 for those with between 100 to 250 employees. Specific details as to the content of the compensation information to be disclosed in these reports have not been provided by the new government at this point, but may include information on the employer's workforce composition and differences in the workforce with respect to gender and "other prescribed characteristics". These reports will need to be posted online or in each of the employer's workplaces.

Implications for Executives and Beyond

The largest impact of the Act is the requirement for employers to include expected compensation information in their external job postings. While this applies to all positions, it is of particular note for executive positions as, in our experience, it is rare for organizations to include compensation details in their public advertisements for these positions, however individual compensation data can be obtained from other publicly disclosed sources. In addition, many organizations do not have job levels or formal compensation ranges for their executives, with the compensation for each executive position being assessed on a job-by-job basis.

One unintended consequence of public disclosure of executive compensation is a ratcheting up of pay. Examples of this can be seen based on the impact of the annual reporting of executive compensation required by publicly traded companies since the 1990s in Canada and the United States and of the public sector disclosure requirements in Ontario, British Columbia, and Alberta (e.g. "sunshine lists" and legislated executive compensation "frameworks" that have to be publicly posted). The ease of relatively readily available pay information can serve to increase candidate pay expectations and affect negotiations with employers, resulting in perpetually higher compensation packages.

Organizations should begin to consider how best to present expected compensation information for all jobs, including their executives, in order to ensure compliance with the new legislation. One way to avoid having to post specific individual position executive compensation information is to ensure that a salary structure exists for all jobs, including executives.

The foundation for assigning jobs to pay grades is through a job measurement methodology such as a job evaluation system. Therefore, in order to facilitate the determination of an appropriate pay grade and associated pay range for each position, including executive roles, the jobs must first be evaluated using a gender neutral job evaluation system, as required by the *Pay Equity Act*. Organizations should review their existing job evaluation tools and prepare any updates necessary, such as developing additional factor levels and descriptions to ensure applicability for



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all jobs, inclusive of executive positions, before formally evaluating each of the jobs and assigning them to pay grades and salary ranges.

In closing, the following are the steps that organizations should proactively take over the next months to ensure they are in a position to be compliant with the new legislation on January 1, 2019:

- Review the organization's existing job evaluation plan for applicability to executive jobs and update as necessary, such as development of additional factor levels and definitions
- Evaluate executive jobs using a gender neutral job evaluation plan
- Assign executive jobs to pay grades based on total job evaluation results, extending the current structure as required
- Develop salary ranges for each of the new pay grades based on competitive market reviews
- Include salary range information on job postings for all jobs, including executives.

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