Bill 149: A Win-Win For Companies And Employees?

On November 14, 2023, Ontario introduced the Working for Workers Four Act, 2023, ("Bill 149"), which proposes providing expanded employee protections.

Are there any positives in the Bill that will benefit job seekers and those already employed?

One such proposed change is for companies to be more open and transparent in using artificial intelligence (AI) as a tool in their hiring process. This ubiquitous technology has escalated in the last couple of years and is now used more heavily when selecting candidates to move forward in the hiring process.

Every employer who posts a publicly advertised job opening and uses AI to screen, assess or select applicants for the position will have to include a statement disclosing the use of AI in the posting.

This means that hopeful job seekers – who have put time and effort into crafting a comprehensive resume and/or cover letter and submitted a solid online application – may be disqualified by an algorithm. It's only right they should know that.

Another potential change will benefit new immigrants to Canada, especially those who have gained many hard-earned skills from back home but end up driving a taxi or doing food deliveries.

The Bill states that no employer who posts a publicly advertised job posting shall include in the posting, or any associated application form, any requirements related to Canadian experience.

Hopefully, this will mean that more Canadian companies will give highly skilled immigrants a realistic chance to gain full employment with them based on their past work experience and not whether they have previously worked in Canada.

Pay transparency will also take centre stage. Every employer who creates a publicly advertised job posting shall include information about the expected compensation for the position or the range of expected compensation for the position.

This is long overdue and will stop job seekers from wasting their time applying for jobs where the salary is way under what they are looking for. Employers should also see a benefit by receiving applications from people more suited to their desired

level.

But are these proposals a win-win for all concerned?

“It’s a start, and obviously, the gender pay gap has been a huge issue in the past,” says Josh Lerner, Associate, Dispute Resolution and Advocacy, Lerners LLP. “It’s really come to light in the last couple of years, and hopefully, this is a step toward addressing that as well. It lets all prospective employees know that they are looking [for jobs] within that range.”

But what if you’re working for a company looking for another team member in your same position, and you see that role advertised for $20,000 higher? You’ll say, “I need to talk to my manager!”

“I think it could create havoc for some employers, especially if there’s already a lot of discrepancies, between how they’re compensating their employees,” says George Hamzo, Partner, Business Law, Lerners LLP.

“There could be human rights complaints out of this because some people who belong to equity-seeking groups will say, ‘Why am I getting paid less than the advertised job posting that’s now required to be within the certain range?'” suggests Hamzo.

“I find myself expressing a more cautious or skeptical perspective at the moment,” he continues. “Some employers will be able to get around this Bill – people who secure job opportunities through personal connections might find it challenging to navigate the new requirements, potentially adding an extra layer of difficulty to the hiring process.

“And through your social networking? What if it doesn’t make its way into a job posting? That sort of transparency is not necessarily required there,” adds Hamzo.

“The other big thing that we haven’t really touched upon is this consideration of NDAs, settlements concerning workplace harassment,” explains Hamzo. “I don’t know that they’ve landed anywhere specifically yet on what they want to do about it, but it’s on their radar, and I’ll be interested to see how that goes.”

Canadian experience. The bane of many job seekers leaving their home countries for a new life in Canada, and ideally, a new job too. How will this play out?

“Who’s to say that the actual impact of it – of an employee’s work experience – is going to be addressed by this bill?” asks Lerner. “That is something you are never going to be able to truly legislate.”

Hamzo adds to that view: “It’s nice to have a rule that ‘we can’t do this,’ but if there’s going to be a whole lot of exemptions here, then that may rob the provision of any teeth. I’m sort of hopeful as to where this will go … but at a ‘wait-and-see approach’ at this point.”

Most job seekers who apply online understand that their cover letter and/or resume will be subjected to some kind of applicant tracking system (ATS). This is a type of resume-scanning software commonly used by recruiters and employers to collect, sort, scan, and rank the job applications they receive, based on keywords and other algorithms. If you can get through that process, you may have the chance to get in front of an actual human being for the interview stage.

A proposed change in Bill 149 is for hiring companies to take that a step further from ATS and openly disclose that AI has also been used in the selection process.

“Personally, in terms of how they want to use it, I see the value in it,” explains Lerner. “I don’t know if the hiring manager is actually looking for a ‘dynamic self-starter,” but maybe AI is doing that by just filtering out those keywords.

“If I were to list my top three employee protections that come out of this bill, I really don’t see AI being on that list because I don’t think it changes a ton. And the reality is AI is here to stay and it’s going to become increasingly prevalent,” he adds.

“This is a wide-ranging anxiety that is touched upon, quite frankly, perhaps more serious: you’re going to have people’s likeness and voices now being manipulated and used in other areas,” says Hamzo. “So I think there’s this push now for transparency. If you are using AI, you’re just upfront about it.”

Final question: Is Ontario lagging behind other provinces or ahead of the curve with Bill 149?

“In terms of nationwide, it’s Ontario, certainly, at the forefront,” answers Lerner. “I think some other provinces have adopted or discussed similar legislation, but I don’t think it’s as far along as Ontario.”

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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