

Can An Ontario-Regulated Employer Prohibit Their Employees From Discussing Their Salaries, Bonuses And Other Compensation?



While open discussions about compensation between employees were once considered impolite, they are becoming more common as people gain awareness of pay inequities.

In 2023, women and visible minorities, on average, still earn less than their male counterparts who are not part of a visible minority. To address these gender and racial pay gaps, governments are enacting pay transparency legislation that limits an employer's ability to restrict or prohibit their employees from discussing their compensation.

Earlier this year, the BC government enacted the [Pay Transparency Act](#), which, among other things, prohibits employers from dismissing, suspending, demoting, disciplining or harassing an employee who reveals their pay to another employee or someone applying to work with their employer.

In Ontario, provincially-regulated employers cannot reprimand (e.g. cannot intimidate, discipline, terminate, or otherwise penalize) an employee for asking another employee about, or disclosing to another employee, their rate of pay if the purpose of the inquiry/disclosure is to determine, or assist another person in determining, whether the employer is in compliance with the Equal Pay for Equal Work provisions of Ontario's [Employment Standards Act, 2000](#) (the "ESA").

In other words, Ontario-regulated employers cannot prohibit employees from discussing their rate of pay if the purpose of those discussions is to determine if an employee of one sex is being paid a rate of pay that is less than an employee of the opposite sex who:

- performs substantially the same work in the same establishment;
- uses substantially the same skills, effort and responsibility; and,
- is performed their work under similar working conditions.

For example, an Ontario-regulated employer cannot stop a female employee from asking her male colleague (who performs the same job, using the same skills, and works along side her in the same office), what his salary is, provided that the reason the female employee is asking is to determine if she is being paid less than him.

Outside of those situations, employers are currently allowed to restrict discussions of compensation as they see fit. As a result, in Ontario, telling an employee that they will face disciplinary action or termination if they disclose their salary to others is contrary to the *ESA* and could result in substantial fines and damages awards if a reprisal complaint is filed with the Ministry of Labour.

Stricter limits may be on the horizon for Ontario

In 2018, as part of the then Liberal government's efforts to address the gender pay gap and other workplace inequities, the government passed the [Pay Transparency Act, 2018](#) ("PTA"), which contains broader anti-reprisal provisions that prohibit employers from penalize their employees for disclosing their compensation to another employee under any circumstances.

This legislation is different from the current law in two major ways. First, employees' freedom to disclose compensation would no longer be limited to discussions regarding pay inequity across male-female gender lines. Second, the disclosure does not have to be for the purpose of assessing an employer's compliance with the Equal Pay for Equal Work provisions of the *ESA*. The *PTA* effectively gives employees complete license to talk about their compensation whenever they wish.

Importantly, however, **the *PTA* is not the current law**. Although it was passed by the previous Liberal government, the current Conservative government postponed its coming into force to an unknown future date. Until the *PTA* comes into force (i.e. becomes law), employers are generally permitted to prohibit their employees from discussing their compensation, provided that employees are permitted to engage in such discussions for the purpose of determining male-female gender pay inequity in their workplace, as discussed above.

Given current global trends, it is expected that legislation like the *PTA* will eventually come into force in Ontario. Employers should remain conscious of the changing landscape and be prepared to adjust their practices accordingly.

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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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