

Ontario, Canada Announces Effective Date And New Regulations Governing ESA Changes To Publicly Advertised Job Postings And Accompanying Recordkeeping Obligations



- Starting January 1, 2026, employers in Ontario, Canada will have new disclosure and recordkeeping obligations regarding job postings.
- New regulations implementing these requirements were issued on November 29, 2024, and will take effect on January 1, 2026.

Ontario's [*Bill 149, Working for Workers Four Act, 2024*](#) and [*Bill 190, Working for Workers Five Act, 2024*](#) both amended the [*Employment Standards Act, 2000*](#) (ESA) by, among other things, setting out requirements and prohibitions related to the content of publicly advertised job postings in a new Part III.1 of the ESA, and creating complementary amendments to the ESA's recordkeeping requirements. Generally, covered employers will be required to provide information about expected compensation or range of expected compensation in publicly advertised job postings, inform interviewed applicants of hiring decisions, and disclose whether artificial intelligence is used in the hiring process, among other obligations.

It was [recently proclaimed](#) that these amendments will become effective on January 1, 2026. In addition, on November 29, 2024, the regulation implementing these requirements, [O. Reg. 476/24: Rules and Exemptions re Job Postings](#) ("Regulation"), was filed and will also come into force on January 1, 2026.

Application of job posting requirements set out in Part III.1 of the ESA

The job posting requirements set out in Part III.1 of the ESA do not apply to an employer that employs **fewer than 25 employees** on the day the publicly advertised job posting is posted.

Definition of "publicly advertised job posting"

The Regulation defines a "publicly advertised job posting" as: "...an external job posting that an employer or a person acting on behalf of an employer advertises to the general public in any manner..."

What is not a “publicly advertised job posting”

The Regulation provides the following are not “publicly advertised job postings”:

- a general recruitment campaign that does not advertise a specific position;
- a general help wanted sign that does not advertise a specific position;
- a posting for a position that is restricted to existing employees of the employer; or
- a posting for a position for which work is to be:
 - performed outside Ontario, or
 - performed outside Ontario and in Ontario and the work performed outside Ontario is not a continuation of work performed in Ontario.

Definition of “compensation”

The Regulation defines “compensation” as “wages.”

When the requirement to include in publicly advertised job posting information about “expected compensation” or “range of expected compensation” will NOT apply

The Regulation provides the requirement to include information about expected compensation or range of expected compensation will not apply to publicly advertised job postings for a position that has an expected compensation equivalent to more than \$200,000 annually, or that ends at an amount equivalent to more than \$200,000 annually.

Limitation on range of expected compensation posted

Part III.1 of the ESA provides that for the purposes of the requirement to post a range of expected compensation, a range is subject to such conditions, limitations, restrictions or requirements as may be prescribed. The Regulation clarifies that this range of expected annual compensation must not exceed \$50,000. For example, a posted range of expected annual compensation of \$50,000-\$100,000 would be acceptable, while a range of \$50,000-\$125,000 would not.

Duty to inform applicants interviewed

Part III.1 of the ESA provides that if an employer interviews an applicant for a publicly advertised job posting, the employer shall, within the prescribed time period, provide the applicant with the prescribed information. The Regulation clarifies the time period and information:

- The **prescribed time period** is within 45 days after the date of the interview; however, if the employer interviews the applicant more than once, the prescribed time period is within 45 days after the date of the last interview; and
- The **prescribed information** is whether a hiring decision has been made in respect of the publicly advertised job posting, and it shall be provided in person, in writing or using technology.

The Regulation defines an “interview” for the purpose of the duty to inform applicants as:

...a meeting in person or a meeting using technology, including but not limited to teleconference and videoconference technology, between an applicant who has applied to a publicly advertised job posting and an employer or a person acting on behalf of

an employer where questions are asked and answers are given to assess the applicant's suitability for the position, **but does not include preliminary screening before the selection of applicants for such a meeting.** [Emphasis added]

Disclosure of use of artificial intelligence to screen, assess or select applicants

Part III.1 of the ESA provides that every employer that advertises a publicly advertised job posting and uses artificial intelligence to screen, assess or select applicants for the position shall include in the posting a statement disclosing the use of artificial intelligence. Part III.1 also provides "artificial intelligence" has the meaning set out in the regulations.

The Regulation defines "artificial intelligence" as:

...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.

Additional job posting requirements in Part III.1 of the ESA

Part III.1 of the ESA contains the following additional requirements regarding publicly advertised job postings, which also come into force on January 1, 2026:

No requirements in postings or associated applications regarding Canadian experience

No employer that advertises a publicly advertised job posting shall include in the posting or in any associated application form any requirements related to Canadian experience.

Statement regarding whether posting is for existing vacancy

Every employer that advertises a publicly advertised job posting shall include in the posting a statement disclosing whether the posting is for an existing vacancy, and any additional information that may be required under the law. At this time, there are no regulations prescribing additional information that must be included in such a statement.

Record Retention Obligations

Finally, Part VI of the ESA (Records) refers to record retention obligations in relation to publicly advertised job postings. These obligations also come into force on January 1, 2026. Specifically, Part VI of the ESA provides at ss. 15 (7.1) and (7.1.1) that an employer shall retain or arrange for some other person to retain:

- copies of every publicly advertised job posting within the meaning of Part III.1 and any associated application form for three years after access to the posting by the general public is removed; and
- copies of all prescribed information provided to the applicant for three years after the day the information was provided to the applicant, *i.e.*, information regarding whether a hiring decision has been made in respect of the publicly advertised job posting.

Bottom Line for Employers

Employers now know the requirements and prohibitions relating to publicly advertised job postings will be in force in approximately one year: **January 1, 2026**.

Employers should bear in mind that, significantly, the job posting requirements and prohibitions set out in Part III.1 of the ESA will **not** apply to them if they employ fewer than 25 employees on the day the publicly advertised job posting is posted.

Now that the Regulation provides additional details pertaining to employer obligations regarding publicly advertised job postings, employers will be in a good position to satisfy their obligations when they become effective. Employers are encouraged to review and amend their workplace policies and procedures pertaining to publicly advertised job postings in accordance with their upcoming obligations so in a year's time when they become effective, they will be able to comply with ease.

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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