

Pay Transparency Compliance Game Plan



Pay transparency has become the hottest thing in cutting edge HR law. Many jurisdictions have recently adopted pay transparency laws and others are sure to follow. As HR director, you need to ensure that your organization complies with these new laws. Implementing pay transparency might also be advisable as a best practice even if it's not currently a legal requirement in your province. Here's a briefing on what pay transparency is all about and the 4 kinds of measures you must take to achieve it.

Does Your Jurisdiction Require Pay Transparency?

The first step is to figure out whether your organization is subject to pay transparency laws. Legislatures in 6 of Canada's 14 jurisdictions have passed pay transparency legislation. However, because of politics, these laws haven't actually taken effect in 2 of those jurisdictions. And there's no guarantee that they ever will. In Ontario, Progressive Conservatives put pay transparency legislation that passed in 2018 during the Liberal Party regime on indefinite hold right after winning the provincial election. However, Ontario is also close to passing a bill amending the *Employment Standards Act* called Bill 149, *Working for Workers Four Act, 2023*, that includes pay transparency provisions requiring employers to disclose expected salary or salary ranges in job postings for publicly advertised positions.

Newfoundland passed combined pay equity and transparency legislation in November 2022, but the transparency provisions haven't yet taken effect.

In May 2023, BC became the most recent province to pass a pay transparency law. That law went into effect on November 1, 2023. Meanwhile, proposed transparency legislation has been proposed but defeated in the legislatures of at least 2 provinces: Manitoba and Saskatchewan. **Bottom Line:** There are 4 jurisdictions where pay transparency laws are currently in effect—Federal, BC, Nova Scotia and Prince Edward Island. Limited pay transparency legislation will also likely take effect in Ontario some time in 2024.

How to Comply with Pay Transparency Laws

If pay transparency is or soon will become mandatory in your jurisdiction, you'll need to take steps to comply. While [pay transparency rules](#) vary slightly, where they do exist, they generally require employers to do 4 things.

Step 1. Post Pay Information in Job Ads

Pay transparency means being open about how much particular jobs or positions pay. Consequently, pay transparency laws require employers to list the expected pay amount or pay range for the position in public job ads. But instead of job ad, the laws use the phrase “publicly advertised job opportunity.” In BC, this includes any form of advertising to the public. Other jurisdictions define the term more narrowly, indicating that expected pay information need not be included in:

- Recruiting campaigns;
- General help wanted signs; and
- Positions that are advertised only to a company’s current employees.

If and when Bill 149 passes in Ontario, the MOL will have to create regulations defining “publicly advertised job postings.”

Practical Pointer: While posting expected pay sounds simple enough, employers must recognize that not just job applicants but also current employees are likely to see that information and consider the potential impacts that will have on morale.

Step 2. Refrain from Asking Job Applicants about their Pay History

Paradoxically, pay transparency laws also ban employers, whether personally or through an agent or third party, from asking or seeking information about how much money applicants made at their previous jobs. While keeping employers from finding out about pay history actually reduces transparency, it promotes gender-based pay equity. **Explanation:** Women generally make 80 cents on the dollar as compared to men for identical work. So, allowing employers to factor pay history into a new employee’s compensation would only perpetuate inequities. At least that’s the theory.

However, bans on employer inquiries about pay history include loopholes. For one thing, they don’t apply to information that’s publicly accessible. In addition, employers are typically allowed to seek general information about the pay level or range for positions comparable to the one the applicant is applying for and then use that information to determine the applicant’s compensation.

Step 3. Allow Employees to Discuss Their Pay with Co-Workers

Pay transparency laws ban employers or their agents from prohibiting or taking adverse action against employees for discussing or disclosing their pay to co-workers. BC takes it a step further by allowing employees to discuss their pay with job applicants. This freedom to share pay information promotes pay transparency among colleagues. The laws also ban reprisals against employees for:

- Asking questions about their own pay or company pay policies;
- Seeking access to the company’s annual pay transparency reports, if they’re required;
- Engaging in pay transparency-related whistleblower activities, such as by reporting the company’s noncompliance to government officials; or
- Asking the company to comply with the pay transparency laws.

Step 4. Submit Annual Pay Transparency Report

The most onerous part of pay transparency laws is the requirement that employers generate and submit annual reports listing detailed information about their employees’ pay by gender, race, ethnicity, age and other personal classifications. There are specific rules regarding how employers collect the required data, the

report format, the information it must contain and to whom it must be submitted. In addition, employers may also have to post annual pay transparency reports on their corporate websites and make them readily accessible to employees.

Of the 6 jurisdictions that have passed pay transparency laws, annual reporting is required only in BC, Newfoundland and the Federal jurisdiction.

Takeaway

The best way to ensure compliance is to create and implement a written HR policy that provides for carrying out each of the above 4 measures required by pay transparency laws. You can use the [template](#) on the HR Insider website to create your own pay transparency policy.