



## **Time's Up: Close the Gender Wage Gap**

Amendments to Bill 3, *Pay Transparency Act, 2018*

Submission to the Standing Committee on Social Policy

April 2018

Women are done waiting.

Women demand fairness in the workplace *now*.

Women demand their fundamental right to receive non-discriminatory pay.

In fact, generations of women have been echoing this demand for decades. Let's not force the next generation of young women to fight the same battle. Let's win it for them.

Right now, the gender wage gap in Ontario is 29.3 per cent.<sup>i</sup> In other words, on average, women in this province earn slightly less than 71 cents for every dollar that men earn. This means, for example, that if a male worker in Ontario retires at 65, a female worker must work until she is nearly 80 to receive the same earnings.

The reality is much starker when an intersectional lens is applied. In fact, the gender wage gap is significantly more pronounced for Indigenous (43 per cent), racialized (38 per cent), and immigrant (34 per cent) women as well as women requiring accommodation (46 per cent).<sup>ii</sup>

Time's up to close the gender wage gap.

An element of eliminating the gap involves pay transparency in the workplace, which is meant to establish accountability among employers and require their compliance with the delivery of non-discriminatory pay – particularly for non-unionized women workers. It must be recognized, however, that this alone will not suffice to close the gender wage gap. Women in Ontario also require strong public services, public child care, and access to unionization.

The introduction of Bill 3, *Pay Transparency Act, 2018*, holds significant promise, with the potential to vastly improve the lives of Ontario's working women.

As it stands, however, this Act is a significantly missed opportunity.

It fails to achieve its primary purpose of ensuring that gender wage gaps are publicly disclosed, thereby providing women with the information required to enforce their rights. In fact, it fails to specify which employers will be required to prepare pay transparency reports; the contents of those reports; the frequency at which those reports are filed; and the ease at which the public can access that information.

The Ontario Federation of Labour (OFL), which champions the rights of both unionized and non-unionized workers, respectfully submits the recommendations outlined below. It is important to note that the OFL supports and endorses the recommendations of the Ontario Equal Pay Coalition.

## **Extend the Act's application to all employers**

Since 1987, Ontario employers have been required to deliver discrimination-free pay under the *Pay Equity Act*. The reality, however, is that more than half of employers have created and/or perpetuated the gender wage gap in their workplaces.<sup>iii</sup>

The provisions of Bill 3, including its application, are largely left to regulations. Publicly, the government has proposed that employers in the Ontario Public Service will first be required to adhere to the *Pay Transparency Act*. Subsequently, following consultations, the obligation will then be extended to employers with more than 500 employees and finally, to those with more than 250 employees.

If the *Pay Transparency Act* is meant to demonstrate whether employers are complying with their existing legal obligations under Ontario's *Human Rights Code* (HRC), *Employment Standards Act* (ESA), and the *Pay Equity Act*, then compliance with the law cannot – and should not – be based on the size of a workplace. In fact, it undermines employers' existing obligations under these laws.

It should be noted that businesses with fewer than 100 workers represent over 95 per cent of businesses in Ontario, thereby allowing Bill 3 to leave far too many female workers behind. In fact, women who are Indigenous, racialized, or new to Canada – all of whom face a larger gender wage gap – tend to work in smaller businesses. Namely, these women are concentrated in sectors such as retail, social services, and accommodation and food services, where the prevalence of insecure employment is disproportionately high.<sup>iv</sup> Failing to ensure that pay transparency measures extend to smaller workplaces therefore further reinforces and perpetuates the pay discrimination experienced by women of colour and immigrant women.

Leaving one woman behind is leaving one too many.

Bill 3 must therefore immediately apply to all private- and public-sector employers.

## **Ensure pay transparency reporting obligations in the Act are intersectional**

Currently, Bill 3 fails to outline the type of information that must be contained in the pay transparency reports. Given that the efficacy of pay transparency obligations largely relies upon the nature of information that will be disclosed, it should be established in the Act itself – not the regulations, where public debate and scrutiny are minimal.

Existing equal pay laws set out the standard for compliance. Namely, the ESA establishes the right to equal pay for equal work with distinctions based on sex and more recently, on employment status. Through the *Pay Equity Act*, equal pay for work of equal value is guaranteed by ensuring that female-dominated jobs are paid the same as male-dominated jobs that are of equal value. Finally, the HRC guarantees that women are entitled to equal treatment without discrimination in all aspects of employment. The scope of reporting obligations in the *Pay Transparency Act* should be intersectional and mirror the existing legal obligations to which employers are already bound.

Bill 3 must therefore mandate that the pay transparency reports are intersectional and explicitly include compensation structure and wage grids by gender, job classification, and employment status (i.e., full-time, part-time, temporary, casual, seasonal, and temporary help agency workers).

### **Enforce pay transparency through the Pay Equity Office**

Currently, Bill 3 states that the outlined pay transparency obligations will be enforced by the Ontario Labour Relations Board. Instead, it should solely be enforced through the Pay Equity Office's Review Officers and Pay Equity Hearings Tribunal. They have extensive expertise in systemic wage discrimination and have extensive experience in issuing orders to disclose necessary wage-related information through their work under the *Pay Equity Act*. Furthermore, the Review Officers and Tribunal have an expedited process for addressing complaints that contravene the *Pay Equity Act's* anti-reprisal provisions and can therefore be leveraged for the *Pay Transparency Act*.

Bill 3 must therefore assign the enforcement of the pay transparency obligations exclusively to the Pay Equity Office's Review Officers and Pay Equity Hearings Tribunal.

### **Introduce mandatory timelines for filing pay transparency reports**

Legislated timelines promote accountability and signal to employers the importance of filing transparency pay reports.

Currently, Bill 3 fails to specify the frequency at which the pay transparency reports must be filed or the deadline for filing such reports. Like most of the Bill, salient provisions are left to the regulations. Instead, the timeline to file a report must be contained in the Act itself.

Bill 3 must therefore require that pay transparency reports are filed annually by May 15th.

### **Incorporate penalties for failure to comply with the Act**

There must be consequences to contravening the *Pay Transparency Act*. Otherwise, Ontarians – particularly women in Ontario – will rightly assume the government's perceived insignificance of such a law and, more importantly, their commitment to closing the gender wage gap.

Currently, Bill 3 fails to include any penalties for employers' failure to comply with the pay transparency obligations. Instead, employers should be required to pay a fine of \$50,000 – in addition to awarding \$1,000 in damages to each employee in the workplace – if they fail to file an annual pay transparency report. While the \$50,000 payment reflects the penalty for contravening a legislated reporting requirement, the damage award acknowledges the infringement on workers' fundamental human right to a discrimination-free workplace.

Bill 3 must therefore contain penalties for failing to comply with and to deliver discrimination-free pay.

### **Strengthen protection against systemic discrimination**

Wage discrimination in Ontario is not concentrated in one sector or profession. It is a systemic issue of the labour market that follows women throughout their career. Employers use compensation history as a standard for subsequent wages.

Although Bill 3 prohibits an employer from asking a job applicant about their compensation history, it does permit them to rely on compensation history – provided they seek such information. This undermines the attempt to ensure that an individual's wage gap is not perpetuated as they move from job to job.

Bill 3 must therefore explicitly establish that employers cannot consider or rely on compensation history in any manner that undermines a job applicant's right to receive discrimination-free pay.

Women should not have to wait any longer. Now is the time for Ontario to implement strong pay transparency legislation and close the gender wage gap so a new generation of women can enter the labour market free of wage discrimination.

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<sup>i</sup> 2016. Census.

<sup>ii</sup> Ibid.

<sup>iii</sup> 2016. Ontario Pay Equity Office.

<sup>iv</sup> 2011. Andrea Noack and Leah Vosko. *Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers' Social Location and Context.*