

ONTARIO NURSES' ASSOCIATION

Submissions on the Proposed Pay Transparency Reporting Requirements

**Ministry of Labour
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OVERVIEW

The Ontario Nurses' Association (ONA) is the union representing approximately 65,000 Registered Nurses (RNs), Nurse Practitioners (NPs), Registered Practical Nurses (RPNs) and Allied Health Professionals, as well as approximately 16,000 nursing student affiliates throughout the province who provide front-line health care in hospitals, long-term care facilities, public health, homes, the community, clinics, and industry.

The gender pay gap continues to pose a barrier to women's equality in Ontario. Based on the 2016 Census data on women's average annual earnings, Ontario women earn approximately 68 cents for every dollar earned by working men (a 32% gender pay gap).¹ The gap substantially increases when gender-based discrimination intersects with other forms of discrimination, including those forms often experienced by racialized women, Indigenous women, immigrant and migrant women, women with disabilities, elderly women, and LGBTQ2S+ women. In Ontario, the pay gap is approximately 56% for women with disabilities, 55% for immigrant women, 45% for Indigenous women, and 40% for racialized women.²

The gender wage gap in Ontario has remained stagnant for the last decade, with women earning around 30% less than men.³ On a global scale, data from the Organisation for Economic Co-operation and Development (OECD) on the gender wage gap reveals that Canada's wage gap is the 7th largest of the 34 countries in the OECD.⁴ This is unacceptable and action must be taken immediately to close the gap once and for all.

ONA has been on the forefront of the battle for 'equal pay for work of equal value' for more than 30 years. Since the inception of Ontario's *Pay Equity Act* in 1987, ONA has fought to achieve pay equity for its membership. ONA spearheaded precedent-setting litigation in the area of pay equity and contributed to the development of legal precedents, which go towards ensuring that women in Ontario have equal access to pay equity. In the early 1990s, ONA successfully fought against hospitals seeking to evaluate the work of nurses represented by ONA using biased evaluation tools that undervalued women's work. In the mid-1990s, ONA and other unions challenged attacks by the government of the day to eliminate the proxy method of comparison – a method of evaluation under the *Pay Equity Act* that protected the most vulnerable working women in predominantly female workplaces who were often the lowest paid women in the workforce.

Over 25 years later, ONA continues to fight for the most vulnerable women by seeking to ensure that pay equity is maintained for women in the proxy sector. ONA, along with the Service Employees' International Union (SEIU), continue to litigate against nursing homes and the government in an effort to attain pay equity compliance in the nursing home sector. Since 2005, the wages of Registered Nurses working in nursing homes have not been pay equity compliant. In the hospital sector, ONA has commenced negotiations with hospitals to evaluate jobs in the ONA bargaining unit. In all areas of health care, ONA has been fighting against wage discrimination by challenging employers to maintain pay equity compliance and taking the necessary steps when they do not.

¹ "Equal Pay Day is Coming!", Equal Pay Coalition, April 9, 2019, available online at: <http://equalpaycoalition.org/wp-content/uploads/2019/03/OFL-Equal-Pay-Day-March-21-2019.pdf>

² *Ibid.*

³ Women's Economic Empowerment Strategy a Canadian First: Ontario First Province in Canada to Introduce Pay Transparency Legislation", News Release, Office of the Premier, March 6, 2018, available online at: <https://news.ontario.ca/opo/en/2018/03/womens-economic-empowerment-strategy-a-canadian-first.html>

⁴ "Earnings and wages – Gender wage gap – OECD Data, available online at: <https://data.oecd.org/earnwage/gender-wage-gap.htm>

ONA welcomed the introduction of pay transparency legislation in Ontario when it was first introduced on March 6, 2018 through Bill 203, *An Act respecting transparency of pay in employment*. ONA has long been a leader on pay transparency issues as a union with publicly available collective agreements that lay out wage scales for all job classifications.

On April 18, 2018, ONA provided written submissions to the Standing Committee outlining critical revisions that were needed in order to strengthen the draft legislation and address the most fundamental issues feeding the gender pay gap and contributing to wage discrimination. ONA was pleased to see that the final version of the *Pay Transparency Act*, passed on April 26, 2018, incorporated a number of its recommendations. The *Act* was to be made effective as of January 1, 2019.

Unfortunately, rather than bring the *Act* into force as planned on January 1, 2019, the Ontario government has delayed its implementation indefinitely and introduced another lengthy consultation process. ONA urges the government to stop delaying the entry into force of the *Pay Transparency Act*. As the Supreme Court of Canada has recently pronounced, “leaving wage inequities in place makes women the economy’s ordained shock absorbers.”⁵ The time to close the gender pay gap is now.

PAY TRANSPARENCY WORKS AND SHOULD NOT BE DELAYED

Pay transparency measures are important tools to assist in addressing the gender wage gap. Such legislation can help to expose when and to what extent men and women are being paid differently for similar work. Pay transparency laws also promote greater accountability and enforceability of other legislative measures in place to address unequal pay, such as the *Pay Equity Act*, the *Human Rights Code*, and the *Employment Standards Act*.

There is clear, evidence-based research to suggest that pay transparency helps to close the gender pay gap.⁶ A recent empirical study examined wage statistics in Danish companies with 35-50 employees before and after the introduction of Denmark’s 2006 Act on Gender Specific Pay Statistics, which required companies with more than 35 employees to report on their gender pay gaps. The data from the mandatory reporting firms were compared with identical information from smaller sized firms with 24-35 employees, which were not required to provide gender pay reports under the legislation.

The research showed that from 2003 to 2008, the gender pay gap at the mandatory reporting firms shrank by 7%, while the gender pay gap at the control firms remained constant. The researchers also found that there was an increase in the number of women hired as transparency increased and, importantly, that transparency measures did not negatively impact firms’ net income.

The evidence is clear - transparency works to close the gender pay gap *and* is good for business. Stop the delays and close the gap now.

⁵ *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para 8.

⁶ Morten Bennedson et al, “Do firms respond to gender pay gap transparency?” (2019) National Bureau of Economic Research Working Paper No w25435, online: SSRN <https://ssrn.com/abstract=3315240>.

RECOMMENDATIONS

ONA has reviewed the recommendations of the Ontario Equal Pay Coalition, and adopts and supports those.

Consultation Questions 1 and 2 re: Gender Pay Gap Calculations

ONA recommends that the gender pay gap calculations should do the following:

- Report on total compensation, including:
 - Mean hourly earnings
 - Median hourly earnings
 - Mean annual earnings
 - Median annual earnings
 - Total compensation includes any form of remuneration payable for work: salaries, commissions, vacation pay, dismissal wages and bonuses; reasonable value for board, rent, housing and lodging; payments in kind; employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans.
- Report on bonuses, commissions and tips (where tips are a fixed percentage of salary) separately from wages because there are gendered gaps in access to these forms of payment.⁷
 - Include the mean bonus gender pay gap
 - Include the median bonus gender pay gap
 - Include the proportion of both men and women in the organization that are receiving bonus payments
- Provide intersectional data based upon gender, race, disability and Indigeneity, which is information that must be reported in the federal sector.
- Report on compensation structures in place, including the number of steps on wage grids, how incumbents move to the top of wage grids (i.e. seniority, merit-based, etc.); if disparities exist in the number of steps on the wage grids for male job classes versus female job classes, how long does it take to move up the grid, etc.
- Report by job classification
- Report by job status to show whether employees are full-time, part-time, casual, seasonal or are hired through temporary help agencies.

⁷ See David Macdonald, "The Double-Pane Glass Ceiling: The Gender Pay Gap at The Top Of Corporate Canada" (January 2019), online: *Canadian Centre for Policy Alternatives* <<https://www.policyalternatives.ca/publications/reports/double-pane-glass-ceiling>>.

Consultation Question 3 re: Reporting Period

ONA supports a reporting period that is based on a calendar year (January 1-December 31), which provides consistency for tax purposes and filing of pay transparency reports. The same reporting period should apply to all employers.

Consultation Questions 4 to 6 re: Implementation and Costs to Employers

Pay transparency is not a burden on employers. A number of jurisdictions around the world have similar laws in place, and in fact have a significantly expanded scope compared to Ontario when it comes to the number of employers that the legislation applies to. For instance, Iceland's *Act on Equal Status and Equal Rights of Women and Men No. 10/2008* applies to businesses with an average of 25 employees or more, with employers being required to obtain an equal pay certification to prove that they offer equal pay for work of equal value⁸; Denmark's *Equal Pay Act No. 899 of 2008* applies to companies with 35 employees or more and requires employers to provide gender wage statistics for men and women of similar job classification⁹; Belgian employers with more than 50 employees must draft a comparative analysis report of male and female salaries every two years¹⁰; in Australia, under the *Workplace Gender Equality Act, 2012*, all private sector employers with 100 or more employees are required to report to the Workplace Gender Equality Agency annually regarding pay structures¹¹; and the United Kingdom's *Equality Act 2010* requires employers with more than 250 employees to publish information relating to the pay of employees for the purpose of showing whether there are differences in the pay of male and female employees.¹²

The information required for pay transparency reports is already regularly collected and used by human resources teams and employers across the province. As the Equal Pay Coalition notes in its Recommendations, much the same payroll data is already prepared by employers for reporting to Canada Revenue Agency and for annual employment equity reports, where required. It is neither costly nor administratively onerous to produce pay transparency reports from data that already exists.

The reality is that employers around the world have been preparing these reports for years and Ontario is behind the times when it comes to using pay transparency measures to close the gender pay gap. Pay transparency is an internationally recognized approach to addressing the wage gap, and mandatory pay transparency reports are already used by many countries around the world, including Australia, Austria, Belgium, Denmark, France, Iceland, Italy, and the UK.¹³ In

⁸ Act on Equal Status and Equal Rights of Women and Men No. 10/2008, as amended by Act No. 162/2010, No. 126/2011, No. 62/2014, No. 79/2015, No. 117/2016 and No. 56/2017, available online at:

<https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf>

⁹ See http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84692 and <https://www.retsinformation.dk/Forms/R0710.aspx?id=121176> (full text in Danish)

¹⁰ See Gender Pay Reporting: An International Survey at p. 9, available online at:

[file:///Users/Andrea/Downloads/Annual%20Employment%20CLE%20Briefing_Gender%20pay%20survey%20\(1\).pdf](file:///Users/Andrea/Downloads/Annual%20Employment%20CLE%20Briefing_Gender%20pay%20survey%20(1).pdf)

¹¹ See "Relevant Employers", Workplace Gender Equality Agency, available online: <https://www.wgea.gov.au/who-needs-report/relevant-employers>

¹² *Equality Act 2010* at s. 78, available online at:

https://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

¹³ See for example Albertine Veldman, "Pay transparency in the EU: A legal analysis of the situation of EU Member States, Iceland, Liechtenstein, and Norway" (April 2017), online: *European Commission* <

2014, the European Commission recommended that every one of its 31 member states introduce at least one of four recommended pay transparency measures – one of which was mandatory employer reports – as a means of addressing what it identified as a “persistent gender pay gap” across the Union.¹⁴

Ontario can, and should, follow the lead of these countries by requiring employers to provide the necessary information and data needed to ensure that pay transparency legislation is a robust tool to enforce pay equity rights.

CONCLUSION

In ONA’s submission, eliminating the gender pay gap is an achievable and necessary goal for the province of Ontario. ONA supports the recommendations made by the Equal Pay Coalition with regard to the reporting requirements. Approaching the gender wage gap from a human rights lens is critical to adopting actions that will not merely do lip service to this problem, but will engage meaningful steps to eliminate the gap. As the *Act* will be one of the primary legislative tools for enforcing and achieving pay equity, ONA supports reporting requirements that are detailed, measurable, and allow for a robust analysis of the full picture of the gender pay gap as it exists in Ontario workplaces.

Ensuring women’s work is properly valued and paid the same as their male counterparts is not just a women’s issue; it’s an issue that affects all of society. We are optimistic that this new initiative by the government will result in meaningful action to eliminate the wage gap. Until then, ONA will continue to advocate on behalf of its members and all women in this province. ONA thanks you for the opportunity to bring our concerns to your attention.

<https://publications.europa.eu/en/publication-detail/-/publication/329c3e47-2bd8-11e7-9412-01aa75ed71a1/language-en>>; *The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 No 353* (UK); “Managing gender pay reporting” (February 2019), online: *Government Equalities Office*, <http://www.acas.org.uk/media/pdf/9/p/Managing_gender_pay_reporting_07.02.19.pdf>; “Pay transparency in Europe: First experiences with gender pay reports and audits in four Member” (2018), online: *Eurofound: European Foundation for the Improvement of Living and Working Conditions*: <<https://www.eurofound.europa.eu/publications/report/2018/pay-transparency-in-europe-first-experiences-with-gender-pay-reports-and-audits-in-four-member>>;;

¹⁴ EC, *Commission Recommendation 2014/124/EU of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency* [2014] OJ, L 69/112.