

Developing Pay Transparency Legislation

DISCUSSION PAPER

JUNE 2022



MINISTRY OF FINANCE | MINISTRY OF LABOUR



Glossary

- **Average Pay Gap Calculations:** the earnings of all workers of a given gender are summed and the resulting value is divided by the number of workers of that gender. The average (also known as mean) is interpreted as the pay that each worker of a given gender would receive, if the earnings of all workers of that gender were divided evenly among them
- **Bonus Pay:** any additional remuneration paid to an employee at an employer's discretion as a result of profit sharing, productivity, performance, commissions or any other incentives
- **Equal Pay:** concept of compensating a person, regardless of their gender, the same pay for the same work
- **Gratuities:** something given voluntarily or beyond obligation for a service (e.g., a tip).
- **Overtime wages:** rates of pay that an employer must pay to an employee who works more than 8 hours in any day or more than 40 hours in a week
- **Pay equity:** efforts to value labour in traditionally women-dominant job classes and sectors the same as men-dominant job classes and sectors
- **Payroll Record:** a list of a company's employees and the amount of money they are to be paid
- **Median Pay Gap Calculations:** the earnings of all workers of a given gender are put in ascending/descending order, and the middle of that earnings distribution is identified. The median separates the half of workers who earn less than that amount from the other half of workers who earn more
- **Registrar:** an official responsible for keeping a register or official records
- **Salary:** a fixed regular payment, typically paid on a monthly or biweekly basis but often expressed as an annual sum, made by an employer to an employee
- **Wage:** salaries, commissions, or money, paid or payable by an employer to an employee for work



Identifying the Issue

British Columbia (B.C.) is committed to closing the **gender pay gap** and removing barriers that stop British Columbians from reaching their full potential. B.C. has one of the highest gender pay gaps in Canada. According to Statistics Canada, in 2021 women in B.C. earned on average 16.7% less than men.

Implementing **pay transparency legislation** and closing the gender pay gap is referenced in the mandate letters of the Minister of Finance, Parliamentary Secretary for Gender Equity, and Minister of Labour. The mandates state that a key objective is to:

“...close the gender pay gap by continuing to address systemic discrimination in the workplace and moving closer to equal pay for equal work through new pay transparency legislation.”



The gender pay gap is caused by multiple factors. Enacting pay transparency legislation will make public pay practices of B.C. employers and further our collective understanding of what root causes contribute to the gender pay gap. The legislation seeks to close the gender pay gap by empowering employers and their employees with factual information about their organization’s pay gap. The issues underpinning it pertaining to the workplace’s dynamics can then be addressed through the adoption or improvement of gender equity policies and practices.

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↓16.7%
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Your Role in Shaping Legislation in British Columbia

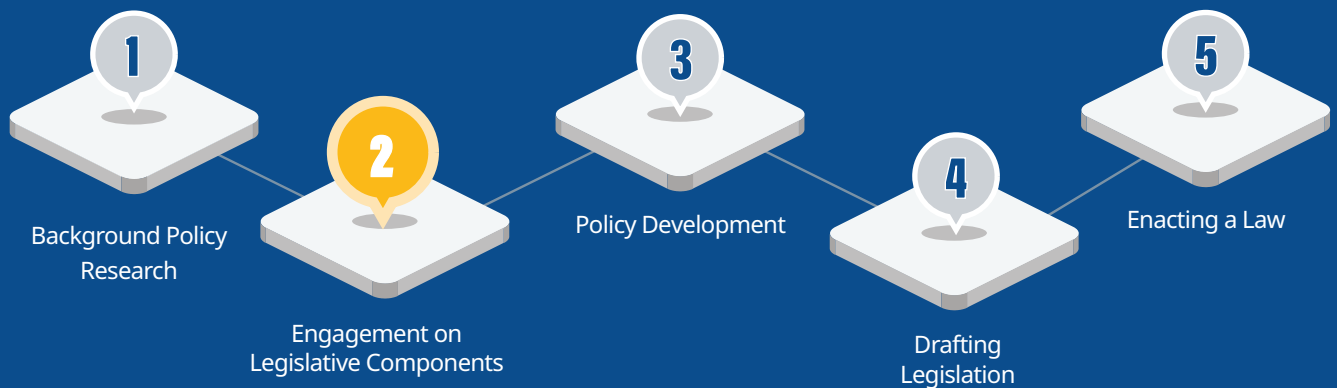
Your participation in this roundtable discussion is greatly appreciated. Your feedback will be an important contribution to shaping pay transparency legislation in B.C.

Engagement Objective

The Ministry of Finance, and the Ministry of Labour from the Province of British Columbia are consulting with Indigenous partners and cross-sector representatives on the concept of pay transparency legislation.

How Input Will be Used

The feedback gathered through this engagement process will be used to help design the legislation, which will be brought forward as a Bill for enactment by the Legislature. It will also help inform how the legislation will be implemented and administered in the future.



Timeline

The timeline for the development of the proposed pay transparency legislation has not yet been confirmed. We remain open to the feedback provided through these roundtable processes, which will play a strong role in the creation of the legislation.

Roundtable Format

- Virtual roundtable sessions held with approximately 10 groups conducted in June 2022
- Presentation followed by an open, respectful discussion
- Representation from the following interest groups:
 - » Indigenous partners
 - » Society
 - » Business associations
 - » Thought-leaders (progressive companies in this space)
 - » Organized labour and employee associations
 - » Investors
 - » Employment and labour legal counsel
 - » Non-profit and public sectors

What is the Gender Pay Gap

The gender pay gap refers to the difference in earnings between people of different genders. While it affects people all along the gender continuum, it is most often expressed as a difference between men and women. Research focused on this binary difference has shown that the negative impacts of the gap disproportionately affect women. The gap presents a significant barrier to gender equality.

The B.C. Gap

In B.C., the median pay gap between men and women was 16.7% in 2021, according to Statistics Canada. B.C.'s gap was much higher than the national median of 12.9%. Only Alberta had a higher gap than B.C. at 19.0%.

Inclusion of More Genders

Gender identity refers to each person's internal and external experience of gender, which may be the same or different from their assigned sex at birth. Gender data collection for the gender pay gap by government has to date only focused on women and men. Proposed for pay transparency legislation, is the use of terms women, men and non-binary, aligning to how an employee has identified themselves in the workplace for enrollment in health insurance and other benefit programming.



The Pay Gap & Intersectionality

The gender pay gap affects women differently based on their intersecting identities. While the pay gap is known to be larger for Indigenous women, and women of various race/ethnicity/faiths, there is limited data available when it comes to people who identify as transgender, gender diverse or non-binary.

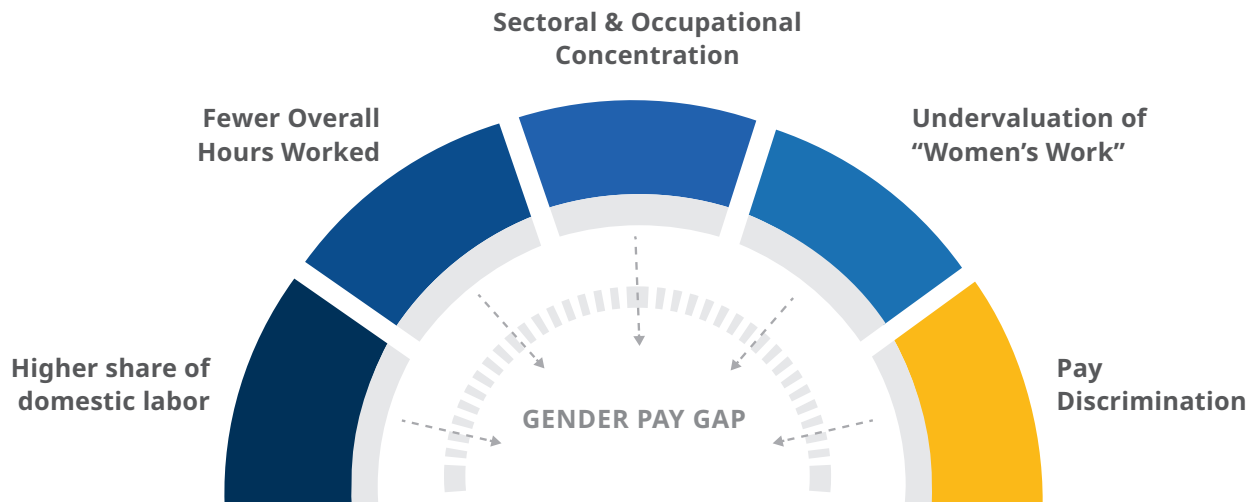
In Canada for every dollar a man makes:

- Indigenous women make full-time average earnings of 65 cents
- Racialized women make full-time average earnings of 67 cents
- Newcomer women make full-time average earnings of 71 cents

This data is in sharp contrast to the higher-level data that shows women in B.C. make average full-time earnings of 86.5 cents to each dollar earned by a man in the province.

Factors Contributing to the Gender Pay Gap

There are numerous factors that contribute to the gender pay gap. Pay discrimination is a common factor that manifests as systemic (e.g., hiring practices) or non-systemic (e.g., held biases) practices in organizations.



**Not all root causes of the pay gap are expressed here, rather it shows a sample*

Legislation under a Multi-Point Plan

The work on pay transparency legislation is part of the Province's larger work within a multi-point plan to close the gender pay gap. A holistic approach is needed due to the complex nature of what causes the gap in the first place. Not all root causes can be solved, or even improved, by employer policies and actions alone. Multiple initiatives and investments needing the support of government are being pursued. Examples include:

- \$10 a day childcare
- Minimum wage increases
- Worker Training and Job Opportunity Office
- Innovator Skills Initiative program – tech sector jobs
- Precarious Work Strategy
- New Skills Training and Career Opportunities program
- Closing the Digital Divide
- Increasing transit options, particularly for rural and remote communities
- Poverty Reduction Strategy
- Anti-Racism legislation
- Support to charitable organizations and non-profit sector



Pay Transparency & Learnings from Other Jurisdictions

As part of the research needed to support the development of pay transparency legislation, a jurisdictional review was completed. Appendix A presents the cross jurisdictional scan. Below is a summary of key learnings.

What are pay transparency policies designed to do?

Pay transparency legislation is being proposed to address the gender pay gap and the implications facing women and people who are transgender, gender diverse or non-binary. Pay transparency legislation is designed to:



1. Address the gender pay gap and the implications facing women and people who are transgender, gender diverse or non-binary



2. Require certain employers to make wage information public



3. Promote equal pay for equal work

Universal Components of Pay Transparency Legislation

As we look to other jurisdictions that have in place pay transparency polices, there are several universal components to their legislation that we may consider for British Columbia. These include:

- 1 **Employer Type (private, non-profit, public)**
- 2 **Employer Size (>50, >100, etc.)**
- 3 **Including identities beyond gender (i.e., IBPOC, level of ability)**
- 4 **Requirements upon employers**
- 5 **Enforcement**

More information about these components can be found on the following page.

Examples of jurisdictions with pay transparency requirements:

- Canada
- Ontario
- U.K.
- Australia
- Denmark

See Appendix A. for our cross-jurisdictional scan.

Your opportunity to engage!

1 Employer Type

There are three main company types that can be covered by legislation:

- Private companies
- Public companies
- Non-profit companies

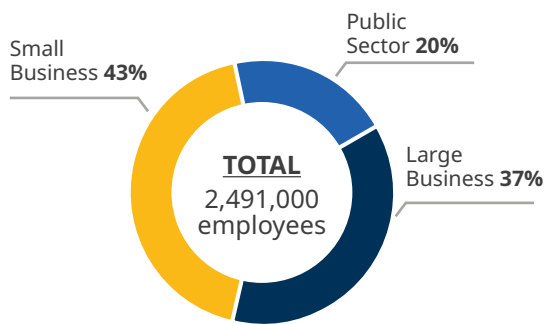


2 Employer Size

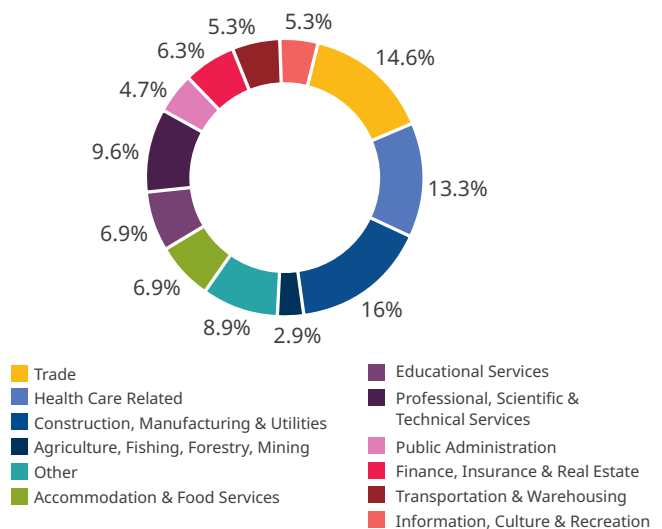
Jurisdictions range in their approach on how large an employer must be to fall under the mandate of reporting. In the U.K., the size is >250 employees while at the Canadian federal level, and in Australia, it is >100 employees. In B.C., during initial discussions with human resources, payroll specialists and the federal government, many recommended B.C. consider a >100 employees as a threshold for reporting for both administrative and privacy reasons.

There may be potential issues with privacy when collecting data from smaller employers, or ones with low levels of diversity. Studies from Ontario and Denmark show greater noncompliance in smaller firms, which may be attributed to smaller organizations having a lower capacity to conduct the required reporting.

Share of total employment in British Columbia, 2020



British Columbia Workforce by Sector of Employment, 2021



3 Including Identities Beyond Gender

Part of this legislation may require employers provide information on equity characteristics in addition to gender and wages. Though an employer would be obliged to make this information public, the employees disclosure of it could be voluntarily for anything that goes beyond what is regularly disclosed for taxation and access to benefits. These additional categories may include: age, ability, race/ethnicity/faith identity and Indigenous identity.

Canada is the only jurisdiction presently collecting intersectional data on employees, although other Nordic countries are exploring doing the same.

4 Requirements upon Employers

In other jurisdictions, especially in the United States, requirements upon employers related to employment practices to promote pay transparency include:

1. Making it a requirement for employers to include wage/ salary information in all job postings,
2. Not allowing employers to ask job candidates about prior compensation, and
3. Preventing retaliation measure being taken by employers against employees who choose to reveal their compensation levels to others.

5 Enforcement

Policies for pay transparency are often designed with some form of enforcement to encourage employers to comply. While some models follow an “opt-in” approach and encourage compliance by making the information public, other models give government bodies the ability to actively enforce the legislation and distribute fines or other penalties should companies fail to comply.

Some options for enforcement include:

- Self-regulation
- Publishing a non-compliant employer list publicly
- Issuing sanctions / fines and penalties
- Limiting further eligibility to apply for government grants or procurement opportunities

Discussion

The following prompting questions are to be used during the roundtable discussions to encourage conversation on the topic of pay transparency legislation in the B.C. context.

About the Gap in B.C.

- What do you see as the root causes of the gender pay gap in B.C.?
- Do you think pay transparency legislation can play a role in closing the gender pay gap?



Legislative Elements

- Do you have any comments on any of the following elements that may be part of B.C.'s pay transparency legislation?
 - » Covering men, women and non-binary genders
 - » Covering employers in the private, public and non-profit sectors over a certain size (e.g., 50 or 100 employees)
 - » Covering other identifying factors, such as Indigenous background, or ability level through a voluntary survey
 - » Level of enforcement of transparency requirements
 - » Requiring public reporting
 - » Making it a requirement for employers to include wage/salary information in all job postings
 - » Not allowing employers to ask job candidates about prior compensation or preventing employees from revealing compensation levels to others
- Are there other elements that could be part of the pay transparency legislation to help close the gender pay gap?

Building on Experience and Expertise

- What advice can you share to help ensure the successful implementation of pay transparency legislation, including advice on obtaining employer compliance and timing?

Appendix A

Jurisdictional Comparisons of Legislative Components

To support the dialog in your roundtable discussion, it is often helpful to consider how other jurisdictions have developed pay transparency policies. Table 1 below outlines jurisdictional examples.

Table 1 - Jurisdiction Comparisons of Pay Transparency Practices

Jurisdiction	Employer Private or Public Sector	Employer Size	Report Frequency & Type	Enforcement of Public Reporting
Canada First release of report data due out end of 2022	Any federally regulated private employer	> 100	Annually: Publication method is still in the design phase.	Escalating enforcement measure may be taken, including the creation of a tribunal for hearings and the use of fines (either \$10,000 or \$50,000).
Ontario Bill passed but not enacted by present provincial government	Private and Public	> 100	Annually: Government will publish or otherwise make public the information submitted by employers. No further details available as all work on this file is on hold.	Under the Act, compliance officers may conduct audits to adherence to reporting and other employment standards. Penalties can also be imposed in accordance with the regulations to the Act. Regulations have not been developed. All work on this file is on hold.
Australia Active	Private	> 100	Annually: Government collects employer level info, but only publishes collated data by industry and region.	Escalating enforcement measure may be taken including: publicly naming non-compliant employers, and restrictions from government contracts, grants or financial assistance.
Denmark Active	Private	> 35	Annually: Employers report to Statistics Denmark or order a free report from Statistics Denmark, if they do not have the capacity. Reports are only accessible by companies, Statistics Denmark, employees or employee representatives.	Not enforced proactively.
Norway Active	Private and Public	> 50 (those between 20-50 can report voluntarily)	Every two years: Government releases tax records information.	Not required as government does a direct release of wage information from tax records to the public.
U.K. Active	Private and Voluntary ¹	> 250	Annually: Government centrally publishes high-level stats with a weblink to the employer's full report (hosted on employer's own website).	Not enforced proactively; an employee must file a claim.
California Active	Private	> 100	Annually: Government collects employer level info and may, in the future, publish aggregated reports.	Government can compel or order employers to file and recover costs from doing so.
France Active	Private	> 50	Annually: Data is published on employer's website or it is communicated internally to employees.	Government can request employers to file and mandate improvements if deemed necessary.

1 Voluntary sector in the U.K. refers to organizations whose primary purpose is to create social impact rather than profit (i.e. non-profit sector)

