Human Resources Legislative Update

Ontario's Proposed New Anti-Racism Standards

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As we previously reported, the Ontario *Anti -Racism Act* (ARA) came into force on June 1, 2017. One of the purposes behind the ARA is to allow certain organizations to collect information that will be used to identify and monitor systematic racism and racial disparities for the purpose of eliminating systemic racism and advancing racial equity. The Ontario government recently published a regulatory proposal to establish Anti-Racism Data Standards (Standards) under the ARA. The purpose behind the proposal is to create standards to regulate the collection, use and management of the personal information collected under the ARA. Learn more below.

What organizations may be subject to the ARA and Standards, as proposed?

The ARA, and the Standards if implemented in their current form, apply to public sector organizations (PSOs) identified under the ARA which include:

- a ministry of the government of Ontario
- a municipality
- a local board as defined in the *Municipal Act*
- a board as defined in the *Education Act*
- a university that receives ongoing operating funds from the government of Ontario
- a college of applied arts and technology, and
- other public sector organizations identified under the ARA.

The ARA only provides the authority to regulate PSOs and allows for regulations to be passed which will require or authorize PSOs to collect race-based data for the purposes of eliminating systemic racism and advancing racial equity.

What obligations does the ARA place on organizations?

The ARA requires the Ontario government to maintain an anti-racism strategy which includes initiatives to eliminate systemic racism, including those that assist racialized groups that are most adversely impacted by systemic racism. The ARA also requires the government strategy to include initiatives to advance racial equity, including those that address the adverse impact of different forms of racism, including anti-Indigenous racism, anti-Black racism, anti-Semitism and Islamophobia. The ARA will require the government to prepare annual progress reports on the strategy and review the strategy at least every five years.

In furtherance of this requirement, the ARA gives the government the authority to create regulations that will require or authorize PSOs to collect specified information, including personal information, in relation to certain programs, services and functions, for the purpose of eliminating systemic racism and advancing racial equity.

When will PSOs be required to do this?

At present, no regulations have been passed requiring the PSOs to collect personal information.

The government is exploring options to require PSOs to collect specified personal information, including information about Indigenous identity, race, and race-related information in relation to specified programs, services and functions in the child welfare, justice and education sectors. The implementation timelines for the collection of personal information may be phased

in over a number of years to enable PSOs to plan and prepare for data collection.

What if individuals refuse to provide information required to be collected?

No program, service or benefit shall be withheld because a person does not provide, or refuses to provide, information under the data standards or the regulations.

What is the purpose behind the Standards?

The proposed Standards would apply to PSOs, as defined in the ARA, and would require that collection of personal information for the purposes of the ARA comply with all or part of the proposed Standards**.** The goal of the Standards is to address racial inequities and to allow government and PSOs to collect data in a way that assures privacy.

What would be included in the Standards?

Among other things, the Standards would include:

1. how PSOs should collect information including notice requirements and consent
2. guidance on how to store, secure, manage and dispose personal information
3. guidance on how to limit access to personal information
4. how to use the data to analyze racial disparities and disproportionalities, and
5. requirements regarding de-identifying personal information when disclosure is necessary.

Are the Standards final?

No. The government recently conducted a public consultation on the proposed Standards to solicit feedback from stakeholders. We will continue to monitor legislative developments in this area, including publication of final Standards.

What other obligations will organizations have when regulations are passed requiring personal information to be collected under the ARA?

If collecting personal information directly from an individual to whom the personal information is related, organizations will need to inform the individual that the collection is authorized under the ARA, the purpose for which the information will be used and that no program, service or benefit will be withheld if the individual does not provide the information. The organization will also need to provide individuals with the contact information of an employee who can answer any questions they may have about the collection of the information.

If information is collected indirectly, organizations must ensure that a notice is published on a website outlining that the collection is authorized under the ARA, the type of information to be collected and the purpose behind the collection. The notice must also include the contact information of an employee who can answer questions about the collection of the information.

The ARA also sets limits on the use of the information, requires de-identification of the information, sets out a one year retention period from the last day it was used by the organization and outlines various other obligations relating to securing the information, ensuring its accuracy and limiting its disclosure.

What can organizations do now to prepare for this change?

To prepare for these changes, organizations should:

- assess their data collection processes and ensure they comply with current applicable legislation – the Standards will

be substantially similar to current legislation
- ensure that those responsible for data collection processes are aware of, and understand, the requirements under the ARA, and
- actively monitor legislative announcements to determine if new regulations require your organization to collect information.

The Ontario Human Rights Commission's new anti-racism education initiative

To coincide with the International Day for the Elimination of Racial Discrimination, on March 21, 2018, the Ontario Human Rights Commission (OHRC) released Call it Out, a new eLearning tool designed to raise awareness about racism and promote inclusion. The program is based on the OHRC's Policy on preventing racism and racial discrimination.

We will continue to monitor legislative initiatives and developments in this area and provide you with updates.