FTR Now

Ontario Budget 2010 – Highlights for Employers

Date: March 29, 2010

On March 25, 2010, the Ontario Government tabled Bill 16, *Creating the Foundation for Jobs and Growth Act, 2010*, omnibus legislation that will amend various statutes to give effect to initiatives outlined in its 2010 Budget – Open Ontario: Ontario's Plan for Jobs and Growth (the "Budget"). This FTR Now provides a summary of those issues in the Budget of particular interest to employers.

FREEZES IN THE ONTARIO PUBLIC SECTOR AND THE BROADER PUBLIC SECTOR

WAGES

As part of its commitment to eliminating the deficit, the Government has proposed a two-year freeze in the compensation structures in the Ontario Public Service and the Broader Public Sector for all non-bargaining employees. The proposed legislation, the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* (the "Restraint Act") would apply to substantially all organizations covered by the *Public Sector Salary Disclosure Act*, except for municipalities, local boards as defined in the *Municipal Act, 2001*, and certain other organizations under municipal oversight. The Restraint Act will be in effect from March 25, 2010 to March 31, 2012.

The Restraint Act will apply to the following groups of persons and employees:

- Members of Provincial Parliament, non-bargaining political staff and non-bargaining employees across the Broader Public Sector and the Ontario Public Service; and
- non-bargaining employees in the Ontario Public Service, hospitals, boards of health, schools, colleges, universities, Hydro One, Ontario Power Generation, and many other provincial agencies, boards and commissions.

The Restraint Act also specifically deems directors, members and officers of an employer to be employees of the employer for the purposes of the restraint measures imposed under the new legislation (section 1(2)).

COMPENSATION

The Restraint Act defines compensation as "…all forms of payment, benefits and perquisites paid or provided, directly or indirectly, to or for the benefit of a person who performs duties and functions that entitle him or her to be paid, and includes discretionary payments". The Ministry of Finance has created an FAQ document, which states that "compensation" will include base pay, merit pay, time off such as vacation, pension, health and other benefits.

The Restraint Act prohibits increases in rates of pay that were "in effect" as of the Effective Date (March 24, 2010 in most cases), and prohibits increases in benefits, perquisites or payments under a compensation plan "as it existed" on the Effective Date. Similar restrictions are placed on contract renewals and new hires or positions. Notably, the Restraint Act does not deal expressly with compensation increases that were decided (and in some cases even approved), but not implemented, prior to March 24, 2010, and this may prove to be an area of contention for some time to come.

Notwithstanding the restraint measures described above, the Restraint Act permits increases in rates of pay within pay ranges, and also permits increases in, or the addition of, benefits, perquisites or payments under a compensation plan (provided that this was authorized under the plan as it existed on the Effective Date), and in both cases, provided that the increase or addition is based on certain factors:

- length of time in employment or in office;
- an assessment of performance; or
- successful completion of a program or course of professional or technical education (section 7(3)).

The Restraint Act expressly forbids the payment of compensation after March 31, 2012 for compensation that an employee or office holder did not receive on account of the restraint measures in the statute.

EXEMPTED EMPLOYEES

The Restraint Act exempts from its application employees who are represented by any of the following organizations for the purposes of collectively bargaining terms and conditions of employment related to compensation:

- trade unions under the *Labour Relations Act*;
- an organization that represents employees under the *Crown Employees Collective Bargaining Act*;
- an organization designated to represent employees under the *Education Act*;
- an employee organization as defined in section 1 of the *Provincial Schools Negotiation Act*;
- an organization that represents employees under the *Colleges Collective Bargaining Act, 2008*;
- an association recognized under the *Police Services Act*;
- the Association as defined in section 1 of the *Ontario Provincial Police Collective Bargaining Act, 2006*; and
- an association recognized under Part IX of the *Fire Protection and Prevention Act, 1997*.

Notably, the exemptions also include employees who are represented by any organization that has collectively bargained with an employer terms and conditions of employment related to compensation that the employer has implemented, or who are represented by an organization that has established a framework to collectively bargain with the employer terms and conditions of employment related to compensation.

The Government has indicated it will respect all current collective agreements. However, the Budget states that there is no provision in the fiscal plan for funding for increases in compensation for future collective agreements: “[a]s agreements are renegotiated, the government will work with transfer partners and bargaining agents to seek agreements of at least two years’ duration. These agreements should help manage spending pressures, protect public services that Ontarians rely on and provide no net increase in compensation” (Budget page 52). As the Restraint Act will come into effect March 25, 2010, this approach will apply immediately to all expiring collective agreements.

MISCELLANEOUS MATTERS

Organizations that are subject to the Restraint Act will be required to file compliance reports, as established by yet to be published regulations.

The Government also plans to create a “Public Sector Compensation Restraint Board”. If employees or employers are uncertain whether the Restraint Act applies to them, they can apply to the Board for determination. The Board has not been given the authority to adjudicate on compensation plans themselves.

Finally, the Budget states that base operating expenses are frozen and that these expenditures will in effect be held at or below 2010-11 levels over the medium term.

PENSIONS

The Budget reiterates the Government's commitment to significant pension reform, which commenced in 2009 with the introduction of Bill 236, the *Pension Benefits Amendment Act, 2010* (currently before Committee). The Budget identifies the following additional measures which, together with Bill 236, are meant to modernize Ontario's pension system:

DIVISION OF PENSIONS ON MARRIAGE BREAKDOWN

The Government will consult on regulations related to Bill 133, the *Family Statute Law Amendment Act 2009*, which introduced new rules for the division of pensions on marriage breakdown.

MULTI-JURISDICTIONAL REGULATION

The Budget announced, and Bill 16 introduces, legislative amendments that will enable Ontario to become a signatory to a multi-lateral agreement among Canada's pension regulators that sets out clear rules respecting the administration and regulation of pension plans that are governed by pension standards legislation of more than one Canadian jurisdiction.

FUNDING RELIEF FOR PUBLIC SECTOR AND BROADER PUBLIC SECTOR PENSION PLANS

The Government will consider temporary funding relief measures for Ontario Public Sector and Broader Public Sector pension plans if certain conditions related to enhanced risk-sharing and governance are met, such as:

- joint sponsorship for future service;
- more equitable sharing of the normal cost of pension benefits;
- linking certain future benefits, such as inflation protection, to plan performance; and
- improved cost certainty and affordability through benefit adjustments.

The temporary funding measures contemplated by the Budget seem to be aimed at single-employer public sector and Broader Public Sector pension plans (e.g. university pension plans). Such measures would, if introduced, be in addition to the temporary and more broadly available solvency funding relief measures that were established in 2009.

THE PENSION BENEFITS GUARANTEE FUND

The intent was for the Pension Benefits Guarantee Fund ("PBGF") to be self-financed through annual assessments paid by employer sponsors of DB pension plans. However, PBGF assets have been insufficient to meet claims on the fund and the Government has provided loans resulting in a debt to the province of $275 million as at March 31, 2009.

As a short-term measure, the Budget provides for a $500 million grant to the PBGF to ensure it has sufficient assets to satisfy claims in the near term.

In addition, the Government will consider potential reforms to address the future of the PBGF following the completion of the independent actuarial projection study of PBGF premiums and benefits that had been called for in 2009 by the Expert Commission on Pensions and commissioned in the 2009 Ontario Budget. The results of that study are expected in the spring of 2010.

POSSIBLE FUTURE PENSION REFORM

The Government also intends to explore other reforms that improve benefit security, that match funding rules against benefit and governance structures, and that share risk and responsibility amongst stakeholders. Potential future reforms include:

- tighter controls on contribution holidays;
- enhanced and potentially accelerated funding of benefit improvements;
- stricter requirements for the actuarial valuation of pension plans;
- encouragement of innovative plan designs within the parameters of the *Income Tax Act* (Canada);
- allowing letters of credit to be used to partially satisfy solvency funding requirements; and
- clarifying procedures for determining wind up surplus entitlement.

Anticipated changes to the investment rules under the federal *Pension Benefits Standards Legislation, 1985* and regulations will be reviewed to determine which changes, if any, will be adopted for Ontario.

In addition to these possible reforms, the Budget reiterates the Government's general support for multi-jurisdictional efforts to expand pension coverage for Canadians and boost retirement savings rates. Options under consideration include increasing benefit and contribution rates under the existing CPP, the introduction of new supplementary defined contribution arrangements to provide additional options for Canadians who do not participate in an employer-sponsored pension plan, and tax reforms to improve private savings. The Budget confirms the Ontario Government's intention to participate in consultations with the federal government and other provinces in 2010, with a view to improving the Canadian retirement income system.

INSURANCE PREMIUMS AND THE RETAIL SALES TAX

The Budget contains measures to facilitate the transition from Ontario's Retail Sales Tax ("RST") to the federally administered Harmonized Sales Tax ("HST") effective July 1, 2010. While the HST will broadly apply to most business and consumer purchases, the RST will continue to apply after July 1, 2010 to certain types of insurance premiums, including group insurance premiums. In conjunction with the continuance of the RST in this respect, the Budget proposes to amend the *Retail Sales Tax Act* to provide that certain costs and fees associated with insurance plans, such as administration fees for benefit plans, will not be subject to RST after October 14, 2009 if they are otherwise subject to the provincial portion of the HST. This amendment will ensure that employers who pay such costs and fees in respect of employee benefit plans are taxed only once under the new HST and not twice under both the HST and RST.

PARALLELING FEDERAL TAX MEASURES

Under the terms of the Canada-Ontario Tax Collection Agreement, Ontario will automatically adopt certain of the 2010 Federal Budget's initiatives. Such initiatives include proposals to the *Income Tax Act* (Canada) related to the scope of the Medical Expense Tax Credit and the tax treatment of employee stock options. Hicks Morley provided a detailed review of these tax measures, including effective dates, in our March 8, 2010 FTR Now, "2010 Federal Budget: Highlights for HR Professionals".

EDUCATION

POSTSECONDARY EDUCATION

The Government has committed to increasing post-secondary operating grants by $310 million in 2010-2011, adding 20,000 new spaces to colleges and universities.

FULL-DAY LEARNING

The Budget reiterates the Government's commitment to full-day learning for four- and five-year olds. This commitment is outlined in Bill 242, the *Full Day Early Learning Statute Law Amendment Act, 2010*, which is currently before Committee and expected to pass. Hicks Morley provided a detailed overview of this Bill in our February 23, 2010 FTR Now, "The Legal Framework for the Early Learning Program".

The program is slated to begin in the fall of 2010 and will affect 600 schools (a transitional regulation has already been filed). It will be phased in over time, with a goal of having full-day learning fully implemented by 2015-16.

EMPLOYMENT STANDARDS CHANGES

EMPLOYMENT STANDARDS OFFICERS

The Government intends to allocate an additional $6 million to increase the number of employment standards officers in the province to help reduce the backlog of employment standards claims and to "improve the protection of Ontario's employees". The number of officers to be hired is not stated. This initiative is presumably to increase their efficiency in responding to complaints. The additional hires may also increase enforcement initiatives.

MINIMUM WAGE

The Government has expressly exempted minimum wage from the wage freeze and it will increase to $10.25 on March 31, 2010.

HEALTHCARE

DRUG PRICE REFORM

As part of Ontario's larger Open Ontario plan, which is intended to improve the quality and accountability of health care in the province, the Budget includes proposed legislation aimed at lowering the prices of generic drugs. The proposals would amend the *Ontario Drug Benefit Act* (the "ODBA") to prohibit drug manufacturers from paying pharmacies and other specified entities professional allowances of up to 20% of the value of the generic drugs sold, a practice which the Government has tied to increased drug prices. The ODBA currently prohibits the payment of rebates to pharmacies but allows the payment of professional allowances. The Budget proposes to replace the exemption for professional allowances with a much more limited exemption for benefits in conjunction with a drug sale that are consistent with ordinary commercial terms. If passed, this measure should assist with lowering the cost of many drugs for Ontario's Drug Benefit Program. It is not immediately clear, however, whether this change will also result in reduced costs for private purchasers, including employer sponsored benefit plans.

CHANGES TO HEALTHCARE

The Government plans to transform the healthcare system with the stated intention of increasing efficiency and effectiveness by:

- introducing legislation to make healthcare providers and executives more accountable for improving patient care;
- reviewing the *Public Hospitals Act* to create a hospital system that taps into the expertise of community partners and health professionals;
- creating an independent, expert advisory body to provide recommendations on clinical practice guidelines; and
- striking a working committee composed of the Ministry of Health and Long-Term Care, Ministry of Finance, Local Health Integration Network representatives and Ontario Hospital Association. The committee will examine the hospital working capital issue and apply appropriate remedies for the hospitals struggling the most with inherited debt. The working committee would be responsible for putting in place an accountability structure to ensure that hospitals pulled

out of negative working capital position stay on the right track.

IMPLICATIONS

Numerous questions surround the implementation of the significant changes contained in the Budget and supporting legislation. In particular, with respect to the wage freeze, questions arise as to whether increases to compensation that were promised (or perhaps even approved) prior to the March 24, 2010 Effective Date can be implemented after that date. As discussed above, the Restraint Act does not expressly address this very important issue.

Furthermore, public sector employers will also face the challenge of negotiating new collective agreements, without new funding to assist with compensation increases. It remains to be seen whether public sector unions and other employee representatives will be willing to negotiate wage freezes, or what the Government will do if negotiations are not proving to be successful.

On the pensions front, many of the Budget measures had previously been announced or were anticipated on account of recommendations that had been made by the Expert Commission on Pensions. A key theme expressed in the Budget is the ongoing viability of the pension system for retirees, plan members and plan sponsors, but few of the reforms that have been proposed to date are likely to create a sufficient incentive for employers to establish or maintain DB pension plans. The bulk of the pension-related initiatives announced in the Budget fall into the category of potential future reform, subject to further consultation and review, and so there is uncertainty as to the exact nature of these potential changes. Hicks Morley will continue to monitor and update our clients on the progress of pension reform.

For more information on the Budget, please contact your regular Hicks Morley lawyer.

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