FTR Now

Ontario Budget 2011 – Highlights for Employers

Date: March 31, 2011

INTRODUCTION

On March 29, 2011, the Honourable Dwight Duncan, Ontario's Minister of Finance, tabled the government's 2011 Budget, "Turning the Corner to a Better Tomorrow", before the Legislature and simultaneously introduced omnibus legislation amending a variety of statutes to implement some of these initiatives through Bill 173, the *Better Tomorrow for Ontario Act (Budget Measures), 2011* ("Bill 173"). This *FTR Now* highlights aspects of the Budget and its supporting legislation of most interest to employers, human resources professionals and pension plan administrators.

MAJOR DEVELOPMENTS IN THE ONTARIO PUBLIC SERVICE AND BROADER PUBLIC SECTOR

AGENCY EFFICIENCIES

The government of Ontario will be seeking cost saving efficiencies of $200 million by 2013-14 from its major crown agencies, including the Liquor Control Board of Ontario and the Ontario Lottery and Gaming Corporation.

EXECUTIVE OFFICE FUNDING RESTRAINT

About three-quarters of the province's current budget goes to transfer payments. Some of the major payments go to the broader public sector ("BPS") to fund hospital, school boards, universities and colleges. In an effort to maximize the value of these payments, the government plans to reduce the growth of executive office costs across the public sector. Over the next two years, the government intends to permanently reduce funding for executive offices of specific transfer payment recipients by ten per cent. This policy will also be put in place for major government agencies.

REDUCING THE SIZE OF THE ONTARIO PUBLIC SERVICE

In the 2009 budget, the government committed to a three-year plan to reduce the size of the Ontario Public Service ("OPS") by five per cent, or approximately 3,400 full-time employees. This is to be achieved through attrition and other measures by March 21, 2012. Some of this reduction arises due to the government downloading services to BPS providers. The government states that it is on track to meet this target, and has made a further commitment to reduce the size of the OPS by an additional 1,500 positions between April 2012 and March 2014.

BROADER PUBLIC SECTOR REFORM

As part of its effort to eliminate the deficit, the government intends to implement additional measures in the broader public service to reduce existing costs. Among these measures, the government will establish a Commission on Broader Public Sector Reform. The Commission's role will be to examine long-term, fundamental changes to the way government works. In part, the Commission will explore which areas of service delivery are core to the Ontario government's mandate, which areas could be delivered more efficiently by another entity and how to get better value in the delivery of services. These long-term goals will be reported in the 2012 budget.

With respect to short-term initiatives, the government will attempt to make the public sector more cost-effective by consolidating programs and services to reduce overlap and develop new ways to deliver programs.

One example of the government's consolidation efforts relates to the province's children's aid societies ("CAS"). There are currently 53 CASs in Ontario and the government has identified 21 that could be consolidated. This consolidation is expected to result in efficiencies that will grow to $9 million by 2012-13. The savings will be specifically redirected to support front-line child welfare services.

AMENDMENTS TO *BROADER PUBLIC SECTOR ACCOUNTABILITY ACT, 2010*

The government has also proposed amendments to the Broader Public Sector Accountability Act, 2010 that would permit the government to issue directives requiring designated BPS organizations to establish rules about perquisites. The proposed amendments, which are outlined in Bill 173, permit the government to make guidelines with respect to "allowable" perquisites for publicly funded organizations.

COORDINATED/CENTRALIZED BARGAINING

The government is striving to make collective bargaining within the BPS more cost effective. There are currently 4,000 collective agreements across the BPS. While the government indicates it recognizes the "important role local bargaining plays in achieving targeted solutions", it believes that the transactional costs associated with negotiating this large number of contracts can be reduced. Accordingly, the government has recently created a Labour Relations Secretariat that will work with stakeholders to explore moving towards more coordinated bargaining in sectors where that might be appropriate. This process is already underway with Community Care Access Centres. It is anticipated that efforts will be made to centralize bargaining with CASs, long-term care operators and other service providers. The government has established a coordinated bargaining structure with school boards for the last number of bargaining rounds.

EDUCATION

Significant *Education Act* amendments outlined in Bill 173 would implement a number of the education reform measures announced in the 2011 Ontario Budget. These relate to school board agreements with qualified third-party providers with respect to before- and after-school extended day programs, among other matters, and will be the subject of a separate school board *FTR Now*.

PENSIONS

The 2011 Budget contains a bit of "old and new". It reiterates the government's commitment to a number of previously announced measures, but also sets out a few new initiatives.

Changes to the existing pensions framework in Ontario that would implement some of these Budget announcements are set out in Bill 173 as proposed amendments to the *Pension Benefits Act* ("*PBA*"). However, Bill 173 proposes additional amendments that would, if passed, make other changes not specifically identified in the Budget.

BUDGET COMMITMENT TO PREVIOUSLY ANNOUNCED MEASURES

The Budget expressed the government's continued commitment to the following reforms:

- permanent solvency funding exemptions for certain jointly sponsored pension plans and related measures, including enhanced disclosure and a prescribed uniform solvency funding threshold of 85 per cent for plans required to file annual valuations;
- implementing proposed draft regulations to address pension division on marriage breakdown;

- reviewing funding requirements for target benefit multi-employer pension plans;
- signing onto the multilateral agreement for the regulation of multi-jurisdictional pension plans;
- implementing its strategy announced on August 24, 2010 to mitigate risks and enhance sustainability of the Pension Benefits Guarantee Fund;
- supporting the federal government's previously announced pooled registered pension plan framework;
- supporting a modest expansion to the Canada Pension Plan consistent with its October 2010 discussion paper "Securing Our Retirement Future: Consulting with Ontarians on Canada's Retirement Income System";
- exploring the concept of a jointly governed single-employer target benefit plan; and
- updating Ontario's pension investment rules.

On this last point, the government fulfilled the commitment to update the pension investment rules with the filing of Regulation 85/11 on March 25, 2011. Effective as of that date, Ontario registered pension plans are to comply with specified parts of the federal investment regulations, *as amended from time to time*. Prior to this change, Ontario registered plans had been required to comply with the federal investment regulations in place as of December 31, 1999.

NEW BUDGET INITIATIVES

In addition, the 2011 Budget announced the following new initiatives:

Filing of the Statement of Investment Policies and Procedures

Pension plan administrators will be required to file their Statements of Investment Policies and Procedures ("SIP&P") with the Financial Services Commission of Ontario, and disclose whether or not the SIP&P addresses environmental, social or governance ("ESG") factors. Ontario will be the first jurisdiction in Canada to require plan administrators to expressly disclose this information. While such disclosure does not necessarily dictate a different approach to investments, it will probably lead to plan administrators giving more specific consideration to ESG factors.

Permitting Annuity Purchase on Termination of Membership

Recent amendments to the *PBA* removed, effective June 30, 2011, the requirement that terminating members be provided with an option to purchase an annuity with their lump sum pension entitlement. The Budget announced (and Bill 173 would implement) a further amendment to the *PBA* to permit terminating members to elect to purchase an annuity with their lump-sum pension entitlement, *if permitted under the terms of the governing plan*. This latest amendment would come into effect when Bill 173 receives Royal Assent.

Options for Unlocated Beneficiaries

The government proposes to explore options with respect to the benefits of unlocated members of plans that have been wound up, in whole or in part. Currently, no formal process exists to handle these benefits, delaying the completion of wind ups.

Updated Regulations to Reflect Changes in Professional Standards

Regulatory requirements will be updated to reflect changes to standards issued by professional bodies such as new actuarial standards of practice and the recent adoption of International Financial Reporting Standards by the Accounting Standards Board.

Broader Public Sector Plans

As part of the measures intended to reduce the cost of the BPS, the Budget announced the appointment of a third party to pursue avenues to achieve greater efficiencies in the administration of the approximately 70 separate BPS pension plans,

including the consolidation of plan administrative functions, pooling of assets for investment purposes and the utilization of new technology.

ADDITIONAL CHANGES IN BILL 173

Bill 173 proposes certain additional amendments to the *PBA*, including amendments to:

- modify the consent requirements with respect to asset transfers made in connection with the sale of business;
- limit the scope of the transitional asset transfer provisions to prescribed plans or prescribed classes of plans;
- authorize regulations to prescribe additional events and circumstances which could entitle terminating members to grow-in rights;
- give authority to the Superintendent to require that plan administrators provide specific additional information and documents to persons entitled to notice of an intended wind up, and to do so within a specified period;
- provide that trade unions, their agents, as well as the agents of employers and other persons required to make contributions to the plan, are not subject to the disclosure restriction imposed on certain others which limits inspections and requests for copies of particular documents to once per calendar year; and
- clarify the provisions for the payment of pre-retirement death benefits to dependent children.

Each of these amendments are to come into force on a date to be named by proclamation of the Lieutenant Governor.

HEALTHCARE

FUNDING INCREASES

The Budget pledges to increase hospital base funding by 1.5 per cent per year and funding in the community services sector, including long-term care homes, by 3 percent per year. The Ministry of Health and Long-Term Care and Ministry of Finance will, over the next three years, put in place $600 million to $800 million in additional cash flow for hospitals that are seriously impacted by working capital problems.

The Budget further introduces several healthcare programs, including:

- $15 million in funding to provide approximately 90,000 more breast screening exams over the next three years;
- a new comprehensive Mental Health and Addictions Strategy, starting with children and youth, with funding growing to $93 million per year by 2013-2014; and
- $100 million in annual funding to enhance pharmacy services and support what is available to individuals who receive coverage through the Ontario Drug Benefit Program.

PRIVACY

The government is proposing to amend s. 18(1) of the *Freedom of Information and Protection of Privacy Act*, which lists records that a head of an institution may refuse to disclose. If passed, Bill 173 will add records that contain “information provided to, or records prepared by, a hospital committee for the purpose of assessing or evaluating the quality of health care and directly related programs and services provided by the hospital”.

OTHER MEASURES AND TECHNICAL AMENDMENTS

In addition to the foregoing, the government has announced an intention to propose further amendments to a number of other statutes, with a view to improving overall administrative effectiveness, maintain the integrity and equity of Ontario’s tax and revenue collective systems, and enhance legislative clarity and regulatory flexibility to preserve policy intent. The Budget identifies 49 statutes that are expected to be affected, including the *Corporations Tax Act, Education Act, Employer Health*

Tax Act, Income Tax Act, Pension Benefits Act and the *Retain Sales Tax Act*. Several of these changes have already been initiated by the introduction of Bill 173.

IMPLICATIONS

The process of implementing some of the key measures highlighted here has begun with the proposed amendments outlined in Bill 173. However, additional supporting legislation and regulatory reform will be required to give full effect to the initiatives outlined in the 2011 Ontario Budget.

We continue to monitor Bill 173 and other legislative and regulatory developments on our blog, Human Resources Legislative Update.

For more information on the Budget or the potential impact of the proposed Bill 173 amendments on your organization, please contact your regular Hicks Morley lawyer.

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