

FTR Now

Government Issues BPS Compensation Information Directive

Date: April 8, 2015

On March 24, 2015, the Management Board of Cabinet issued the [Broader Public Sector Compensation Information Directive](#) (the “Directive”) under the *Broader Public Sector Executive Compensation Act, 2014* (the “BPSECA”). The Directive came into effect on April 1, 2015. In this *FTR Now*, we will briefly review the Directive and its role within the scheme of the BPSECA, and consider what it may mean for your organization.

THE BPSECA

As we reviewed in detail in our March 10, 2015 *FTR Now* (“[New BPS Compensation Restraint Law to Come into Force March 16](#)”), the BPSECA came into force on March 16, 2015. It is the next generation of compensation restraint in Ontario, and will complement and, in some cases, replace the compensation restraint measures contained in Part II.1 of the *Broader Public Sector Accountability Act, 2010* (the “BPSAA”).

The BPSECA empowers Cabinet to establish regulations creating “compensation frameworks” that apply to designated employers and designated executives to whom the statute applies. Any compensation framework created under the BPSECA will govern the compensation that may be paid by a designated employer to a designated executive covered by that framework. The framework may establish limits on any element of a compensation plan, including salary, benefits, perquisites, bonuses, incentives, etc. Compliance with a compensation framework will be mandatory, and can be enforced through a number of measures.

The BPSECA empowers Management Board of Cabinet to issue directives under which the government can compel designated employers to provide detailed information related to compensation and other payments made to designated executives, including information of specific individuals. The BPSECA contains a number of provisions that deem any disclosures of personal information under a directive to be compliant with the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*, as applicable.

THE DIRECTIVE

The Broader Public Sector Compensation Information Directive is the first directive issued under the BPSECA. It can be seen as the first step toward the development of compensation frameworks under the statute. The Directive applies to **all** designated employers under the BPSECA. Several key features are worth noting.

First, the Directive itself does not require the submission of any information at this time. Rather, it will require the submission of information upon the written request from either: (1) the Minister whose ministry funds, oversees or usually deals with the designated employer in question; or (2) the Minister who oversees the BPSECA generally (currently, the government has given oversight to the President of the Treasury Board – i.e. the Honourable Deb Matthews, Deputy Premier, President of the Treasury Board, and Minister Responsible for the Poverty Reduction Strategy).

Second, the Directive contemplates two broad purposes for financial information to be gathered: research and analysis (to support evidence-based decisions and a potential benchmarking system); and long-term compensation management.

Third, should a designated employer receive a written request for information, the request should specify both the information sought and the timeline in which it must be provided.

Finally, the Directive describes a very broad range of compensation information that can be sought, including:

- a wide range of compensation information set out in questionnaire form in an electronic template which is attached as Appendix B to the Directive (discussed further below);
- copies of any compensation-related agreements between employers and employees (which could include employment contracts or side agreements);
- copies of compensation policies, plans, guidelines and programs; and
- compensation studies.

The questionnaire contemplates the submission of a broad range of quite specific compensation information primarily about designated executives, including salaries, incentive compensation payments, and all sorts of benefits, allowances, pensions and supplemental retirement arrangements, etc. The questionnaire will also require the submission of compensation information about the highest paid employees who report directly to designated executives.

CONCLUDING THOUGHTS

It is clear that the government is proceeding with the next phase of compensation restraint. We anticipate that the development and roll-out of compensation frameworks under the BPSECA will take some time.

As we reminded readers in our March 10, 2015 *FTR Now*, **organizations that are currently designated employers under Part II.1 of the BPSAA continue to be subject to those compensation restraints**. The current information-gathering process does not change this. Rather, it is only when an actual compensation framework under the BPSECA is passed and begins to apply to an organization that the BPSAA compensation restraints will cease to apply.

All organizations that are designated employers under the BPSECA should review the Directive, and especially Appendix B. There may be some benefit to beginning the process now of identifying designated executives, as well as all elements of their compensation plans.

Your [regular Hicks Morley lawyer](#) would be happy to assist you with better understanding the BPSECA and the Directive, and what they may mean for your organization.

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