

FTR Now

Executive Compensation Program Implementation – Lessons Learned to Date

Date: February 22, 2017

Much has happened since the Ontario government released [Regulation 304/16](#) (Regulation), made under the *Broader Public Sector Executive Compensation Act*, in September 2016. The Regulation provided long-anticipated direction to broader public sector employers on how to exit from the executive wage freeze legislation that had been in place in some form since 2010.

Requirements of the Regulation

The Regulation is quite directive concerning the criteria that must be met in order to exit the existing executive wage freeze. It requires that organizations establish a maximum amount of salary and performance pay that may be payable to designated executives within that organization. These maximums are determined by identifying and reviewing compensation in comparable organizations. These comparable organizations must meet the criteria in the Regulation.

The Regulation also provides some flexibility to individual organizations to allow them to fashion an executive compensation program that best meets their needs. The responsibility for establishing and implementing the executive compensation program falls on the Board of Directors of each organization.

All applicable public sector employers are required to publicly consult on their proposed compensation program, which must comply with the detailed Regulation. The final compensation programs must be posted on the employers' websites no later than September 5, 2017.

Reactions to the Public Consultation Process

In late fall 2016 and early 2017, a number of employers began posting their draft programs on their websites further to the necessary public consultation. These postings have resulted in a significant amount of public and media attention, as well as government responses. These responses are important to consider as your organization moves forward.

Many media organizations and unions representing employees in organizations that have posted programs for public consultation have commented negatively during the public consultation

process. They have looked at the published maximums and compared those to an executive's current compensation, as posted on the Sunshine List. They presume that the posted maximums are the new salaries that will be implemented even though individual compensation decisions cannot be made until the public consultation process has been concluded and the final compensation programs are published. It is perhaps not surprising, given the six-year freeze, that some of these comparisons can imply that significant increases may be forthcoming.

The media has also been critical of the comparable organizations that some employers have used to establish new maximum compensation levels, arguing that in fact the organizations are not comparable and should not be used. Programs have also been attacked based on general perceptions of excessive public sector executive salaries.

The Government's Response

The Ontario government has been sensitive to these criticisms. In late January 2017 it issued the *Executive Compensation Framework Compliance Report Directive*. This directive requires each organization to provide the government with a Compliance Report on or before the date the compensation program is finalized and posted. This report must confirm that the employer's program is in compliance with the Regulation and provide the website location where it is to be posted. This report will need to be completed each time an organization revises and re-posts its program (for example, if an organization recalculates maximum salary plus performance pay).

An annual compliance report will also be required.

On February 2, 2017 the Ontario Premier indicated the government would refuse any salary increase if an organization did not achieve the right balance. On February 3, 2017, the Honourable Liz Sandals, President of Treasury Board, issued a letter addressed to all public sector Board Chairs reminding employers of the criteria for establishing appropriate comparator organizations. The letter suggests that public consultation documents should include more information concerning possible compensation increases, not just the potential maximums.

The letter also indicates that the government expects compensation increases to be modest and that employers should consider phasing-in gradual increases over time.

Finally, the government indicates that no executive increases can be implemented until a compliant program is in place and requests that the overseeing Ministry be made aware of the contents and timing of consultation drafts. Programs should not be finalized without confirmation from the overseeing Ministry.

While none of these directions are included in the initial Regulation governing the process, the legislation allows the government to issue specific directions to individual employers if it considers that necessary.

The programs must be in place by September 5, 2017. A number of our lawyers have been assisting clients as they review the requirements of the Regulation and proceed through the public consultation process to a point where they can post their final programs and determine what compensation increases are appropriate for executives who have been subject to the freeze.

Hicks Morley can assist in reviewing your strategies to implement the required compensation programs and ensure your organization is compliant with the statute and regulations while being sensitive to the government directions. Please feel free to contact [Carolyn Kay](#) at 416.864.7313, [Wallace Kenny](#) at 416.864.7306 or your [regular Hicks Morley lawyer](#) should you wish our assistance.

The articles in this client update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©