FTR Now

The Outlook is More Change: Ontario Proposes Significant Reforms to Pension and Employment-Related Statutes

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The Ontario government's Economic Outlook and Fiscal Review (Fiscal Review) and supporting omnibus legislation, Bill 57, the *Restoring Trust, Transparency and Accountability Act, 2018* (Bill 57), propose a number of significant reforms to pension, benefit, tax and employment-related legislation and other initiatives that will impact your workplace and pension plan administration. Bill 57 also contains proposals related specifically to fire services, which were outlined in our prior communication, *Ontario Government Tables Legislation Impacting Bargaining and Interest Arbitration in the Fire Sector*.

In this *FTR Now*, we focus on initiatives and proposals of particular interest to employers, human resources professionals, and pension plan administrators and sponsors.

OHIP+ Benefit Coverage for Children

The Fiscal Review indicated that starting in March 2019, the government would become the second payor under Ontario's Youth Pharmacare Program (OHIP+). OHIP+ provides prescription drug coverage for eligible Ontario residents under age 25 and was implemented on January 1, 2018. Effective March 1, 2019, claims for eligible dependents who have coverage under a private plan, such as benefits plans provided by employers, must be submitted through the private plan, rather than OHIP+.

In addition, the Fiscal Review indicated that the government will review the delivery of publicly funded health benefits, including as a first step, a review of the Ontario Drug Benefit Program.

Employer Health Tax Relief

Currently, eligible private sector employers benefit from an exemption on Employer Health Tax (EHT) on payroll of up to $450,000. This exemption will increase to $490,000 as of January 1, 2019. The increase is based on the Ontario Consumer Price Index. The Fiscal Review also indicated that the government would not be moving forward with the proposals to target the EHT exemption announced in the 2018 Ontario Budget.

Pension-Related Initiatives

The Fiscal Review and Bill 57 include a number of proposed amendments to the *Pension Benefits Act* (PBA) as well as changes the *Financial Services Regulatory Authority of Ontario Act, 2016* (FSRAO) that will be of interest to employers and pension plan administrators.

Electronic Beneficiary Designations: One of the most significant proposed changes in Bill 57 is an amendment to the PBA to permit pension plan administrators to accept electronic beneficiary designations. Under the current legislative frameworks governing testamentary dispositions and electronic signatures, there is no clear legislative authority for electronic beneficiary designations made with respect to pension benefits and "wet" signatures continue to be widely required. If passed, the new provision would expressly override anything to the contrary in the *Succession Law Reform Act* (Ontario) and allow pension plan administrators to accept electronic beneficiary designations. Plan administrators will be required to comply with any prescribed requirements regarding electronic beneficiary designations, but no regulations have been introduced at this time.

Discharge for Annuity Purposes: As we previously reported, the PBA was amended to add a new section 43.1, providing a discharge for the liability of an administrator of a single employer pension plan when a pension benefit has been bought out through an annuity purchase. Supporting regulations came into force on July 1, 2018.

Bill 57 proposes to make changes to section 43.1 of the PBA, clarifying the applicable requirements. Most notably, Bill 57 amends the PBA to extend the statutory discharge to annuities purchased for survivors, not just former members and retired members as section 43.1 was originally drafted.

Bill 57 also provides that, for annuity purchases on or after the day on which Bill 57 receives Royal Assent, the purchase must comply with prescribed requirements relating to funding. In addition, Bill 57 provides that the administrator is deemed not to have been discharged if the annuity purchase is determined to not have met with the requirements and adds certain regulatory enforcement powers in relation to annuity purchases that do not comply with the applicable requirements.

Variable Benefits: Steps were taken earlier this year towards implementing the option for defined contribution (DC) pension plans to offer variable benefit accounts, which would permit retired members to received benefits directly from a plan. The Fiscal Review indicates the government's intention to proclaim into force the framework for variable benefit accounts, which was originally passed as part of Bill 91, *Building Ontario Up Act (Budget Measures), 2015*.

Bill 57 would also modify the unproclaimed variable benefit provisions to allow a retired member to transfer up to 50 per cent of the amount transferred to a variable account to a registered retirement savings arrangement, where certain requirements are met. Further, Bill 57 would also amend the definition of "specified beneficiary," which will apply to variable benefit accounts, to only include a spouse of a retired member rather than a designated beneficiary of a retired member.

Non-Resident Unlocking: Bill 57 proposes adding a provision to the PBA to permit pension plans to provide unlocking of deferred pensions for non-residents of Canada who are former members of the pension plan. The spouse of the former member, if applicable, must provide a waiver for the unlocking.

The pension legislation in several other provinces already provides for unlocking for non-residents. Employers will want to consider whether to amend their plans to permit unlocking in respect of their Ontario former members.

Jointly Sponsored Pension Plan (JSPP) Mergers: The Fiscal Review also affirmed the government's support for plan mergers and conversions from single-employer pension plans to JSPPs, noting that several are currently underway in the broader public sector. To that end, Bill 57 includes a proposed amendment to section 80.4 of the PBA, which governs transfers into JSPPs, to clarify that if the pension plan merging with the JSPP provides both defined benefit and DC benefits, the transfer of the DC benefits must comply with prescribed requirements. No such requirements have been published yet.

The Fiscal Review also highlighted the government's commitment to supporting a new JSPP in the university sector, in particular, indicating the government's intention to treat the new university sector JSPP similar to other broader public sector, solvency-exempt JSPPs following a successful conversion and a request from the newly established university plan.

Financial Services Regulatory Authority: Bill 57 proposes some amendments related to the transition of regulatory authority to the Financial Services Regulatory Authority of Ontario (FSRA) from the Financial Services Commission of Ontario, as previously announced in Bill 70. If passed, Bill 57 would establish FSRA as the sole regulator for financial services other than securities in Ontario, amalgamating it with the Deposit Insurance Corporation of Ontario. Proposed amendments would also support the transfer of responsibility for the Motor Vehicle Claims Fund to the Ministry of Government and Consumer Services, focussing FSRA's mandate on its regulated sectors.

Employment-Related Initiatives

Outlined below, we identify some of the key proposed reforms and initiatives that will be of particular interest to employers and human resources professionals.

Pay Transparency is Deferred – Indefinitely

Notably, Schedule 32 of Bill 57 will, if passed, defer the coming into force of the *Pay Transparency Act, 2018*. Currently, that Act is set to take effect on January 1, 2019. Should this amendment pass, the January 1, 2019 effective date would be repealed, and the Act would come into force on a future, as yet unspecified, date to be proclaimed.

For background information on the Act, consult our prior publication, *Ontario Passes Pay Transparency Legislation*.

Broader Public Sector (BPS) Compensation Management

1. Compensation for Agency Employees

A "renewed approach" to managing compensation in the BPS will be a key element in the government's plan going forward. As an initial step, the government has indicated that agencies with collective agreements expiring on or after December 31, 2018 will be required to obtain approval of their bargaining mandates and ratification of collective agreements.

The government will also be "exploring additional opportunities to expand collective bargaining oversight" to other areas of the BPS.

2. Executive Compensation

More change is coming with respect to BPS executive compensation as well. As we previously reported, on August 13, 2018, the Ontario government implemented a new compensation framework under the *Broader Public Sector Executive Compensation Act, 2014* (BPSECA) that came into immediate effect.

All pending BPS executive compensation increases are suspended on an interim basis as the government seeks to complete a full regulatory review by June 7, 2019. The government will continue stakeholder consultations, with a view to developing a long?term approach to broader BPS executive compensation that better aligns with the government's fiscal priorities.

Details on the recent compensation framework reforms are outlined in our prior publication, *BPS Executive Compensation – New Framework Takes Immediate Effect*.

Use of Service Animals in Schools

The government intends to clarify the appropriate use of service animals in schools, to better balance the rights and needs of all parties. Note, however, that Bill 57 does not contain any provisions related to this initiative at this time.

Workplace Safety and Insurance Board (WSIB) Review

As part of a broad review of agencies, the government will launch a review of the workers' compensation system to assess long-term sustainability and an appropriate balancing of risk and rate predictability.

Personal Support Worker Agency Review

As a further element of its agency review, the government has wound down the Self?Directed Personal Support Services Ontario agency. Services and support to eligible clients and families will continue to be provided by Local Health Integration Networks (LHINs) under another self?directed care initiative, the Family?Managed Home Care program.

Municipal Authority to Enhance Smoking Rules

Effective October 17, 2018, cannabis consumption rules in Ontario are aligned with the restrictions set out in the *Smoke?Free Ontario Act, 2017* (SFOA), which among other things strictly prohibits the consumption in certain places (such as near schools, children's playgrounds, hospitals and child care facilities).

Bill 57 proposes to amend both the *Municipal Act, 2001* and the *City of Toronto Act, 2006* to clarify the existing authority of municipalities to further restrict smoking or vaping, including in other outdoor spaces such as parks, through implementation of bylaws (Schedules 5 and 27).

For background information on the new *Smoke-Free Ontario, 2017* framework and recreational cannabis, consult our prior insights.

Low-Income Individuals and Families Tax Credit

The government is proposing the creation of the Low-Income Individuals and Families Tax (LIFT) Credit, effective January 1, 2019. The LIFT Credit is intended to cause individuals with employment income who earn less than $30,000 per year to pay no Ontario Personal Income Tax. Tax relief would be gradually reduced for taxpayers with earnings above this threshold and family incomes greater than $60,000. The LIFT Credit will be claimed at the time that taxes are filed by individual taxpayers.

Takeaways and Next Steps

We will continue to monitor Bill 57 and the initiatives outlined above and provide you with timely updates. In the meantime, should you require further information, please consult your regular Hicks Morley lawyer.
