

## FTR Now

# Ontario Proposes Significant Changes to Wage Restraint and Collective Bargaining in the Public Sector

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Following through on a [consultation process](#) that was kicked off on April 4, 2019, the Ontario government has introduced legislation that, if passed, would significantly impact most broader public sector employers.

On June 5, 2019, the government introduced Bill 124, the [Protecting a Sustainable Public Sector for Future Generations Act, 2019](#). Bill 124 provides for a 3-year window of salary moderation and compensation restraint measures for non-union and unionized employees employed by the Ontario government, Crown agencies, the broader public sector and a range of organizations that receive funding from the government of Ontario.

While Bill 124 has been introduced in the Legislature, the government has [invited feedback on the Bill](#) from stakeholders over the course of the summer. Employers who would be impacted by the new Act should therefore carefully review the Bill during the current feedback phase to assess its potential impact on your workplace and the status of your current collective bargaining.

In this *FTR Now*, we will review the key elements of Bill 124.

## Scope of Bill 124

### Employers

Bill 124 would apply to a wide swath of the public sector, including not-for-profit organizations that received more than \$1,000,000 in government funding in 2018. Organizations that would be subject to the proposed new restraints include:

- the government and all manner of Crown agencies, boards, commissions, etc.;
- universities and colleges;
- school boards;
- public hospitals;
- licensees under the *Long-Term Care Homes Act, 2007*, unless they operate on a for-profit basis;
- Ornge;
- children's aid societies;

- any not-for-profit organization that received at least \$1,000,000 in funding from the government of Ontario in 2018; and
- any organization prescribed by regulation.

The Bill explicitly excludes:

- municipalities;
- local boards established under the *Municipal Act, 2001*;
- authorities, boards, commissions, corporations, offices or organizations of persons, a majority of whose members, directors or officers are appointed or chosen by or under the authority of the council of a municipality; and
- organizations that undertake their activities for the purpose of profit to their shareholders (subject to any regulations providing otherwise).

## Employees

Bill 124 would apply to virtually all employee groups of the employers subject to the new Act. This includes not only non-union employees, but also all unionized and organized employees regardless of which bargaining organization represents those employees.

Notably, Bill 124 would not apply to “designated executives” who are subject to the *Broader Public Sector Executive Compensation Act, 2014* (BPSECA). Rather, those “designated executives” would remain subject to the BPSECA and the compensation frameworks established under the BPSECA regulations.

The Bill would permit the government to also exclude employees or classes of employees by regulation.

## Salary Moderation

Bill 124 would create a “moderation period” that would apply to different employee groups at each employer covered by the new Act. Moderation periods would run for a 3-year period. During the applicable moderation period, two basic compensation restraints would apply.

First, Bill 124 would limit increases to salary rates to no more than 1% per 12-month period for any individual position or class of positions. This would apply whether the increases were found in collective agreements, arbitration awards or the compensation plans of non-union employees.

This first limit would not apply to prohibit salary rate increases related to (i) length of time in employment (such as normative movement through a collective agreement wage grid), (ii) assessment of performance, or (iii) the successful completion of a program or course of professional or technical education, provided that such increases are authorized under a collective

agreement or compensation plan.

Second, Bill 124 would also limit “incremental increases to existing compensation entitlements or for new compensation entitlements” to no more than 1% averaged over all employees covered by a specific collective agreement or over the employer’s non-unionized employee group. This latter limit expressly includes salary rate increases covered by the prior restraint provision, which must meet this broader 1% cap.

Compensation is broadly defined to include “anything paid or provided, directly or indirectly, to or for the benefit of an employee, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments.”

The specific starting dates for the moderation periods would vary for different employee groups. For unionized employees, a salary moderation period would not override current collective agreements, but would apply for a period of three years upon the expiry of existing collective agreements. In the case of expired collective agreements, both freely negotiated agreements and interest arbitration awards rendered after June 5, 2019 would be subject to both restrictions, including the 1% annual compensation cap. Bill 124 addresses other possible scenarios as well (for example, where parties are negotiating a first collective agreement on June 5, 2019).

For non-union employees, the Bill would provide some leeway to employers to determine when the moderation period would begin after June 5, 2019, but it could begin no later than January 1, 2022. This would not apply to non-union employee groups whose salary rate increases are tied to increases negotiated for unionized employees. In this latter case, the moderation period for the non-union employees would need to be the same as the moderation period that would apply to the collective agreement for that group of unionized employees.

## **Non-Compliance**

The Bill provides the government with the specific order-making authority to declare collective agreements and interest arbitration awards non-compliant with the Act, and sets out a number of remedial steps should such an order be made.

## **Anti-Avoidance Measures**

The Bill also contains significant anti-avoidance measures, which are intended to prohibit employers from paying out compensation both prior to the moderation period coming into effect and after the moderation period ends, in an effort to avoid restraint measures that would otherwise apply.

## **Reports, Studies and General Provisions**

The Bill would permit the Management Board of Cabinet to issue mandatory directives requiring information to be filed, including information on:

- compensation;
- collective agreements, employer bargaining mandates, negotiated settlements and submissions to arbitrators;
- the employer's costing with respect to collective agreements, proposed or negotiated changes to collective agreements, compensation plans and proposed changes to compensation plans;
- the moderation periods that apply to represented and non-represented employees;
- agreements between an employer and one or more employees relating to compensation; and
- compensation policies, plans, guidelines and programs.

In addition, the Bill contains provisions that would ensure that it would not be applied to reduce an employee's rights or entitlements under the *Human Rights Code*, *Pay Equity Act* or sections 42 or 44 of the *Employment Standards Act, 2000*.

The Bill would place significant limits on the remedial authority of the Ontario Labour Relations Board and labour arbitrators. Neither the Board nor an arbitrator could adjudicate challenges to the Act on the basis of either the *Canadian Charter of Rights and Freedoms* or the *Human Rights Code*.

As with other compensation restraint legislation, Bill 124 also contains extensive provisions restricting an employee's ability to claim damages for any losses suffered as a result of the compensation restraints, and protecting employers from claims related to actions they are required to take under the new Act.

## Conclusions

If enacted, Bill 124 would have a significant impact on labour and employment relations in the Ontario public sector. All public sector organizations will have to review their compensation practices to ensure compliance with the new rules. In doing so, it is important to note that many of the Bill's provisions specifically reference June 5, 2019, indicating that there will be a degree of retroactivity to its application. Thus, any compensation decisions made from this point forward could be subject to the new Act in some way.

Bill 124 is in the earliest stages of the legislative process, and the government has indicated that it intends to solicit feedback from stakeholders over the course of the summer. Therefore, in addition to reviewing the Bill for its specific implications with respect to your organizations, employers should consider whether to contact your government representative to provide feedback on the Bill.

Furthermore, the Bill could still be amended throughout the legislative process. Hicks Morley will be carefully monitoring the development of the Bill, and will be reporting on any amendments of note.

If you have any questions about Bill 124 and its application to your organization, please contact [your regular Hicks Morley lawyer](#).