

FTR Now

Update on Ontario Government Wage Restraint Initiatives

Date: November 8, 2019

Bill 124 is now law.

This week saw the Ontario government move forward with wage restraint initiatives that will impact a significant number of employers in the broader public sector. These initiatives included the passage of Bill 124, [Protecting a Sustainable Public Sector for Future Generations Act, 2019](#) (Bill or Act), and a further update out of the Fall Economic Statement on plans for a new compensation framework for designated executives.

The Act provides for a three-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 Ontario government.

In our *FTR Now* of June 6, 2019, [Ontario Proposes Significant Changes to Wage Restraint and Collective Bargaining in the Public Sector](#), we reviewed the Bill in detail.

In this *FTR Now*, we look at the amendments made to the Bill and their impact on collective bargaining and non-union wage review activities that may have occurred since the Bill was first tabled. We also discuss the government's recently announced plan regarding "designated executives" under the *Broader Public Sector Executive Compensation Act, 2014* (BPSECA).

Scope of the Act

As we previously reported, the Act applies to a large portion of the public sector, including not-for-profit organizations that received more than \$1,000,000 in government funding in 2018. However, the Act specifically excludes the following employers:

- 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
- organizations that undertake their activities for the purpose of profit to their shareholders (subject to any regulations providing otherwise).

Through recent amendments at Committee, these exclusions have been extended to also include:

- local boards under the *City of Toronto Act, 2006*
- Indigenous communities
- authorities, boards, commissions, corporations, offices or organizations of persons, including a council of the band within the meaning of the *Indian Act (Canada)*, a majority of whose members, directors or officers are appointed or chosen by or under the authority of one or more Indigenous communities
- a police governing authority relating to a First Nations reserve as referred to in section 54 of the *Police Services Act*.

Determination of Moderation Period

It is in this area where the Act was most fundamentally changed.

Generally, the Act establishes a salary moderation period for unionized employees, but does not override current collective agreements. Save for the situations noted below (which were clarified with amendments), all expired collective agreements that are up for renewal after June 5, 2019, are subject to the moderation requirements of the Act.

Following a summer consultation period, significant amendments were made at Committee to provide clarity to parties who may have concluded collective bargaining for a new collective agreement or who received an interest arbitration award since the Bill was introduced earlier in the summer.

Specifically, the amendments address the following situations:

- Where a collective agreement was entered into, in good faith, but not yet implemented or ratified on or before June 5, 2019, the three-year moderation period will apply to the parties' next collective agreement commencing on the day the renewed collective agreement expires
- Where a collective agreement was entered into, in good faith, but not yet implemented or ratified between June 5, 2019 and the date that the salary restraint provisions of the Act come into force, subject to certain restrictions, the Minister may make regulations specifying that the moderation period begins on the day immediately following the day the collective agreement that gives effect to that agreement expires and ends on the day that is three years later
- Where a collective agreement is concluded by way of an interest arbitration award rendered after June 5, 2019 but before the salary restraint provisions of the Act come into force, the three-year moderation period will apply to the parties' next collective agreement commencing on the day the awarded collective agreement expires.

Exceptions to Maximums Imposed on Salary Rates, Existing Compensation or New Compensation Entitlements

With regard to unionized workplaces, the Act contains provisions relating to maximum increases in salary rates, maximum increases in compensation and restrictions on increases in salary rates where a collective agreement has expired. Amendments to the Bill create additional exceptions to these provisions which relate to:

- voluntary exit programs approved by Management Board of Cabinet
- certain pension contribution offsets where an employer is converting a single employer pension plan into a jointly sponsored pension plan
- prescribed payments to be specified by regulation

The Bill was also amended to apply these same additional exceptions to non-unionized employees.

Authority to Determine Inconsistency with the Act

The Act gives the Minister the sole discretion to make an order declaring that a collective agreement or an arbitration award is inconsistent with the Act. An amendment has been made such that where a collective agreement or arbitration award applies to employers both covered and not covered by the Act, the Minister's order will only apply with respect to the employers covered by the Act.

The Fall Economic Statement and BPSECA

The Act does not apply to “designated executives” who are subject to the BPSECA. Those “designated executives” remain subject to the BPSECA and the compensation frameworks established under the BPSECA regulations.

Broader public sector employers have long awaited news on the development of a new compensation model to replace the current BPSECA freeze provisions. Some light was shed on this issue in the [2019 Ontario Economic Outlook and Fiscal Review](#) tabled on November 6, 2019. Here, the government announced that it plans to issue a new framework for all “designated employers” under BPSECA by the end of the year.

We will continue to monitor and report on any future developments on this topic and will send an update when the content of the new BPSECA regulation is released.

Next Steps

The Act will come into force upon proclamation.* Once in force, it is certain to have a significant impact on workplaces. Organizations governed by it will want to carefully plan for negotiations where an emphasis on management rights and language will likely become more important. Employers with unrepresented employees will now want to establish a plan to ensure that their compensation practices comply with the new rules.

Ultimately, all affected employers will need to assess the new legislation in the context of their own union and non-union compensation practices across their organization to determine the appropriate approach to compensation adjustments going forward.

If you have any questions about the Act, its application to your organization and its impact on your current or upcoming collective bargaining negotiations, please contact [your regular Hicks Morley lawyer](#).

****Editor's Note: Bill 124 was proclaimed into force on November 8, 2019, except for sections 39, 40, 41(2) and 42(2)***