Proposed Changes to Broader Public Sector Executive Compensation

May 02, 2019

On April 11, 2019, the Ontario government introduced its proposed budget and Bill 100, the *Protecting What Matters Most Act (Budget Measures), 2019*. Bill 100 includes amendments to 61 different statutes, among them the *Broader Public Sector Executive Compensation Act, 2014* (BPSECA). While the bulk of the substantive changes to broader public sector executive compensation will likely come in the form of regulations, the proposed changes to the BPSECA provide a preview of what may come — including more government involvement, pay adjustments based primarily on performance, and limits on compensation increases.

Background

Compensation for designated executives at broader public sector organizations including hospitals, school boards, colleges, and universities has been restricted in various forms and under various legislation since 2010.

As we previously reported, on August 13, 2018, the employer-developed compensation programs and approval process of BPSECA's Regulation 304/16 were replaced with a strict freeze under Regulation 406/18. The government committed to reviewing Regulation 406/18 by June 7, 2019. Bill 100 appears to position the government to amend or replace Regulation 406/18, on schedule.

Proposed Amendments under Bill 100

In its budget document, the Ontario government describes its "new approach" as follows:

- The review [of public sector leadership compensation] determined that existing practices in the public sector allowed for automatic adjustments to executive compensation regardless of the results achieved. This system does nothing to reward excellence or improve public services.
- The government is now moving forward with an approach that ends automatic pay increases for public sector leaders. Under the new framework, pay-for-performance may only be provided to those leaders who achieve the bold

outcomes the Province needs. Compensation adjustments would be controlled, and only executives who deliver on priority-driven outcomes would be eligible.

To this end, Bill 100 proposes the following amendments to the BPSECA:

- Regulations under BPSECA may authorize the Management Board of Cabinet to "establish rules governing a designated employer's use of performance assessment indicators in determining a designated executive's compensation". This means that the government may dictate the priorities and metrics for which achievement-based pay may be provided.
- Regulations may also authorize the Management Board of Cabinet to limit salary and performance-based pay increases, including by limiting the number of designated executives who may receive increases, and the time period for which a designated employer may provide increases. While the budget document referred to "ending automatic pay increases," this proposal suggests that salary increases will still be available, but in a more limited form.
- Newly-created designated employers may not hire permanent executives without government approval (or written exemption) of the executive's compensation plan.
- The government may exempt employers from requirements set out in the compensation framework found in the Regulation.
- The transition provisions in section 9 of BPSECA are clarified to confirm that existing executives may only be grandfathered until August 13, 2021, *i.e.* three years following the introduction of Regulation 406/18. The President of the Treasury Board, however, may bring that date forward to an earlier date, or exempt an employer until a specified date. The anti-avoidance provision found in section 9 has been removed.
- Finally, the proposed amendments formally repeal Part II.1 of the *Broader Public Sector Accountability Act, 2010* and the *Public Sector Compensation Restraint to Protect Public Services Act, 2010*. The compensation restraint measures in these statutes, however, had already expired or were inapplicable given the introduction of BPSECA.

Conclusion

The proposed amendments to BPSECA, along with announced consultations to review public sector collective bargaining and compensation, are consistent with the government's actions and stated priorities to date. Bill 100 sets the stage for another change to the BPSECA Regulation, in which the government will provide further detail on the powers it intends to exercise in respect of broader public sector executive compensation.

By

Maddie Axelrod

Expertise

Labour & Employment

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.