Executive Salaries Frozen Effective August 13, 2018

September 20, 2018

On August 13, 2018, the Ontario government filed Regulation 406/18, and revoked Regulation 304/16, under the Broader Public Sector Executive Compensation Act, 2014 (the BPSECA). This latest change reverses two years of hard work to implement new compensation programs, and institutes a strict compensation freeze similar to prior legislation.

Background

Since 2010, Ontario's broader public sector was subject to a freeze on executive compensation, which applied to directors of education, supervisory officers, and other executives at school boards. The restraint provisions in the Public Sector Compensation Restraint to Protect Public Services Act, 2010 and then in the Broader Public Sector Accountability Act, 2010 operated to effectively prohibit increases to compensation for school board executives except in limited circumstances. The general approach was to refrain from providing executives with salary increases, and to provide salaries to new hires that were equal to or less than those provided to the prior incumbents. This legislation has significantly affected the past earnings and future pensions for these essential senior administrators.

In 2014, after the provincial budget was balanced, the Ontario government began the process of developing public sector compensation frameworks to ensure a consistent approach to executive compensation. The BPSECA, and Regulation 304/16, issued on September 6, 2016 (the Old Regulation), replaced the prior compensation freezes with a more nuanced and balanced approach to executive compensation in the broader public sector.
In compliance with the BPSECA and the Old Regulation, the four school board trustee associations[1] worked together with Mercer (Canada) Limited, an independent consulting firm specializing in executive compensation, and the Council for Ontario Directors of Education to collaboratively develop a comprehensive proposed Executive Compensation Program to be used across the province. School boards also worked with their trustee associations, Mercer, and legal counsel to answer many complex questions as the new executive compensation programs were developed and implemented.

In accordance with the BPSECA and the Old Regulation, school boards submitted their own executive compensation programs to the Ministry of Education by September 29, 2017. Following initial approval from the ministry with respect to the comparator organizations and proposed rate of increase for the compensation envelope, school boards then posted their executive compensation programs on their websites for thirty days of public consultation. After incorporating relevant public comments, school boards submitted their executive compensation programs to the Ministry of Education for final approval.

Following tireless work for over a year and a half, all 72 school boards in the province ultimately succeeded in having their executive compensation programs finalized and posted by February 28, 2018. The salary increases found in those programs were to be applied retroactively to September 1, 2017.

New Regulation

On August 13, 2018, the Ontario government set aside the work of school boards to develop executive compensation programs, and imposed a single framework across the broader public sector. All designated employers in the broader public sector, including school boards, are restricted from providing executive compensation increases as of August 13, 2018 until the government completes a regulatory review of the compensation program by June 7, 2019.

The Ontario government filed Regulation 406/18 (the New Regulation) and revoked the Old Regulation on August 13, 2018. The New Regulation replaces the more complex executive compensation programs with simple restraint measures similar to those under the earlier legislation. All executive compensation programs developed under the Old Regulation are now null and void to the extent that they provide for compensation increases that are inconsistent with the New Regulation.

The New Regulation revokes the executive compensation programs — including the comparator-based individual pay caps and incrementally increasing pay envelope — and replaces the framework with the following key provisions, effective as of August 13, 2018:

- The salary provided to each designated executive position must be less than or equal to the amount provided to the person occupying that position on the effective date of August 13, 2018 or, if the position is vacant on that date, the amount provided to the most recent incumbent. "Salary" means the salary actually being earned by the executive, and not any raises that would have happened after that date nor any other amount in the position’s salary range.
- A school board’s "performance-related pay envelope" must be less than or equal to the total performance-related pay disbursed to designated executives during the most recent pay year before the effective date, and must be reduced or increased on a pro-rated basis when executive positions are vacated, eliminated, filled, or created. If the school board did not provide any performance-related pay in the 2016-2017 school year, its performance-related pay envelope will be zero and it will not be permitted to introduce performance-related pay at this time.
- School boards may not provide any new other element of compensation (such as car allowances or lieu payments) for a designated executive position after August 13, 2018. Additionally, other elements of compensation are capped at what they

were on August 13, 2018 and may not be increased. However, it is not considered an "increase" if a benefits plan is amended for "all or most of the employees of the employer", or if there is an increased cost for providing the same benefits.

- Among other restraints, newly-hired executives must be paid the same or lower salary as the prior incumbent, and the new hire may not be provided with other elements of compensation beyond those provided to the prior incumbent.
- For newly-created positions where there was no prior incumbent, compensation is limited to that provided to the "most similar position at the designated employer".
- The prohibitions on certain elements of compensation from the Old Regulation remain in place. School boards may not provide designated executives with the following:
    - Payments or other benefits provided in lieu of perquisites;
    - Signing bonuses;
    - Retention bonuses;
    - Cash housing allowances;
    - Insured benefits not generally provided to non-executive managers;
    - Termination pay, including pay in lieu of notice of termination and severance pay, in excess of 24 months' base salary;
    - Termination pay that is payable in the event of termination for cause;
    - Paid administrative leave, with limited exception for certain executives at colleges or universities; and
    - Payments in lieu of administrative leave.

The government's August 13, 2018 memorandum to broader public sector employers noted that the government may request school boards to report on compliance with the New Regulation.

The government has committed to reviewing the New Regulation by June 7, 2019 and will evaluate the its effectiveness in furthering the purpose of the BPSECA. Additionally, the government's August 13, 2018 memorandum also stated that "opportunities will be available for [employers], other stakeholders and interested parties to provide input as part of this review."

Implications

School boards need highly skilled, thoughtful, and engaged leaders to guide their organizations in providing, promoting, and enhancing publicly funded education. Many school boards in the province have faced challenges in recruiting executives, and have faced compensation compression between executives and non-executive managers, including principals. In this regard, a competitive and fair Executive Compensation Program is vital for attracting and retaining talented and innovative leadership required to ensure continued progress in student achievement.

Nevertheless, despite the hard work of school boards across the province, the balanced approach reflected in the Old Regulation, and the public consultation and government approval that was incorporated into the Executive compensation programs, school boards will now be subject to a strict freeze on executive compensation. Any planned salary increases for the 2018-2019 school year will not be permitted by the New Regulation, nor will increases to other elements of compensation. Whatever compensation directors of education, supervisory officers, and other executives were entitled to receive on August 13, 2018, that is what they — and executives newly hired

into similar roles — will receive for the foreseeable future.

School boards are encouraged to participate in the government's upcoming "opportunities … to provide input", and we will provide further detail once available. We will also provide further updates if the New Regulation is amended upon completion of the government's review.

1 The Ontario Catholic School Trustees' Association, the Ontario Public School Boards' Association, the Association des conseils scolaires des écoles publiques de l'Ontario and the Association franco-ontarienne des conseils scolaires catholiques

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