Changes To Broader Public Sector Executive Compensation Framework

June 20, 2017

The changes follow nine months of clarifications, public relations difficulties, and confusion after the Regulation was first introduced in September 2016.

On June 9, 2017, the Ontario government introduced amendments to Regulation 304/16, Executive Compensation Framework (the "Regulation"), made under the *Broader Public Sector Executive Compensation Act, 2014* (the "Act"). The changes follow nine months of clarifications, public relations difficulties, and confusion after the Regulation was first introduced in September 2016.

In addition to amending the Regulation, the government's recent changes also include issuing a new Broader Public Sector Executive Compensation Program Directive, and updating the Broader Public Sector Executive Compensation Guide. These documents change the process for developing, reviewing, and posting executive compensation programs under the Act.

Timing and Review

Prior to the recent changes, broader public sector ("BPS") organizations covered by the Act were required to post compensation programs online by September 5, 2017, which were to become effective upon posting. However, the original Regulation had not included a clear mechanism for government review or approval prior to becoming effective. Some BPS organizations developed and posted their compensation programs, but faced criticism from the government. Accordingly, the government issued a series of memoranda indicating that it intended to be more involved in reviewing compensation programs.

Now, BPS organizations will have until September 29, 2017 to submit draft compensation programs to their overseeing ministries for review. Following government review, BPS organizations will be required to address any feedback and obtain confirmation from their overseeing ministries before proceeding. Once that confirmation is obtained, BPS organizations may then post their programs for public comment. After addressing any relevant public comments, BPS organizations must obtain final approval from their overseeing ministries, and only then may their final programs be posted and effective.

BPS organizations seeking to use private sector or international comparators in their executive compensation programs must obtain pre-approval to do so from the President of the Treasury Board, prior to submitting a proposed executive compensation program for review.

The Program Directive provides that, in exceptional circumstances, the September 29, 2017 timeline may be extended. Examples of potentially exceptional circumstances include instances where designated employers are newly created, are undergoing mandate review, or are intending to merge with other designated employers. BPS organizations wishing to take advantage of a potential timeline extension should write to the President of the Treasury Board and set out the rationale for the deferral request, as well as a proposed alternate timeline.

Salary and Performance-Related Pay Envelope

The recent changes introduce the concept of a "salary and performance-related pay envelope." This cap is an overall maximum amount of salary and performance-related pay that a designated employer may provide to all of its designated executives for a given pay year (which is a period of one year in which an employer determines the salary and performance-related pay to be paid to its designated executives).

Employers may select a maximum rate of increase to that envelope, which must be approved by the overseeing ministry, and must consider only the following factors:

- The financial priorities and the compensation priorities of the Ontario government, as indicated in a number of public sources;
- Recent executive compensation trends in the Canadian public sector and BPS industries in which the employer competes for executives;
- A comparison between the proportions of the employer's and the comparator organizations' respective operating budgets used for executive pay;
- The effect on attracting and retaining executive talent of the difference between the designated executives' salary and performance-related pay range and that of the positions reporting to them; and
- Any significant expansion in the operations of the designated employer that is not the result of a significant organizational restructuring.

The maximum rate of increase may only be re-determined if a salary and performance pay cap for a designated executive is recalculated, or if the designated employer provides a designated executive with any (permissible) additional element of compensation.

Increases to the salary and performance-related pay envelope are, therefore, based on the formula P + (P x R), where P is the total (annualized) salary and performance-related pay that the designated employer provided to all of its designated executives for the previous pay year, and R is the approved rate of increase to the pay envelope.

Salary and Performance-Related Pay Cap

While designated executives may see compensation increases due to an increase in the overall salary and performance-related pay envelope, these increases are still subject to the executives' individual salary and performance-related pay caps.

The recent amendments do not affect the existing provisions governing elements of a designated executive's compensation. Further, calculation of a designated executive's salary and performance-related pay is still based on an analysis of compensation at selected comparator organizations. However, these comparator organizations will now need to be approved by the overseeing ministry. Draft compensation programs must also outline the rationale for selecting each proposed comparator organization.

Additionally, a designated executive's salary and performance-related pay cap may be increased once per pay year by a given rate: either the average rate of increase for non-executive managers in the most recent pay year, or the public sector wage settlement trend in Ontario (based on a number of government sources), whichever is lower.

For a review of the original provisions of the Regulation, please see our summary here.

Submitting Programs and Next Steps

BPS Organizations should ensure they are drafting their compensation programs based on the revised Regulation, Program Directive, and Compensation Guide. Draft programs must be submitted for review by September 29, 2017, and must include the following:

- A list of all designated executive positions at the designated employer;
- The salary and performance-related pay cap for each designated executive position or class of positions;
- The comparator organizations and positions used in each pay cap calculation, along with an explanation of why each is comparable based on at least three of the listed factors;
- The percentile compensation that was selected for setting the pay cap (which may be up to the 50th percentile);
- The weighting for any non-Canadian or non-BPS comparator organizations' pay data;
- The total (annualized) salary and performance-related pay that the designated employer provided to all of its designated executives for the previous pay year (for purposes of calculating the salary and performance-related pay envelope);
- The proposed maximum rate of increase for the salary and performance-related pay envelope;
- A description of any other element of compensation available to designated executives that is not generally provided, in the same manner and relative amount, to non-executive managers, and the reasons why the element is required; and
- A description of the designated employer's compensation philosophy, including how the program supports the employer's strategic objectives and what the program is designed to reward.

Compensation programs may also include additional information to support or explain the BPS organization's proposals, or to respond to government feedback during the review period. The Compensation Guide suggests that employers may wish to list

salary range minimums, job rates, and incentive or performance-related pay targets and maximums.

BPS organizations must also submit any revisions to compensation programs for re-review and approval whenever revisions are contemplated.

If a BPS organization posted a final compensation program before June 8, 2017, the new Regulation provides certain transition rules. The already-posted program will remain in effect, and the original Regulation will continue to govern, until the organization posts a new compensation program under the new Regulation.

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.