

**PROVINCIAL GOVERNMENT INTRODUCES LEGISLATION THAT WOULD FREEZE THE
WAGES OF CERTAIN PUBLIC SECTOR EMPLOYEES**

INTRODUCTION

As part of the implementation of its 2010 Budget measures, the provincial government recently introduced Bill 16 – an omnibus bill entitled *Creating the Foundation for Jobs and Growth Act, 2010*. Significant to public sector employers is the introduction of the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* (the “Act”), which would freeze the compensation structure for certain public sector employees for two years.

The proposed legislation would take effect retroactively to March 25, 2010 and remain in effect until March 31, 2012.

WHO WILL BE AFFECTED?

The Act will affect all members of provincial parliament and non-union employees and employees who do not bargain collectively in the Ontario Public Service and across the broader public sector, including hospitals, boards of health, schools, colleges, universities, Hydro One, Ontario Power Generation, and many other provincial agencies, boards and commissions.

The Act would not apply to employees who are represented by any of the following organizations for the purpose of collectively bargaining with their employer, terms and conditions of employment relating to compensation:

1. A trade union certified or voluntarily recognized under the *Labour Relations Act, 1995*.
2. An organization that represents employees under the *Crown Employees Collective Bargaining Act, 1993*.
3. An organization designated to represent employees under the *Education Act*.
4. An employee organization as defined in section 1 of the *Provincial Schools Negotiations Act*.
5. An organization that represents employees under the *Colleges Collective Bargaining Act, 2008*.
6. An association recognized under the *Police Services Act*.
7. The Association as defined in section 1 of the *Ontario Provincial Police Collective Bargaining Act, 2006*.
8. An association recognized under Part IX of the *Fire Protection and Prevention Act, 1997*.

9. An organization that, before the effective date, has collectively bargained with the employer, terms and conditions of employment relating to compensation that were implemented by the employer.
10. An organization that, before the effective date, has an established framework for collectively bargaining with the employer, terms and conditions of employment relating to compensation.

Accordingly, the Act would not apply to unionized employees or non-union employees who collectively bargain.

Other employees who are exempted from the Act include employees whose employers receive less than \$1 million in funding from the province, employees of municipalities and employees of local boards.

Although the Act would not apply to unionized employees or those who bargain collectively, the provincial government has stated that such employees should not expect increases in compensation when their agreements expire, as there will be no funding available for such increases upon the renegotiation of those agreements. Furthermore, new agreements will be expected to have a two-year duration. It is not clear whether these rules will apply only to agreements that expire on or after March 25, 2010, or whether they will also apply to agreements that expired prior to this time but were not renegotiated as of March 25, 2010.

The proposed legislation states that it impacts employees of boards of health (which are often run by municipalities), yet on the other hand, the proposed legislation states that municipalities shall be exempted from the Act. This contradiction does not appear to be resolved on the face of the proposed legislation; however, relevant background documents and comments from the provincial government have emphasized that the Act shall not cover municipal employees (although municipalities have been urged to follow the provincial government's lead on the issue of employee compensation). It remains to be seen whether the provincial government will provide further clarification on this issue.

HOW WILL IT WORK?

Subject to the significant exceptions noted below, affected employees would see their wages remain what they were as of March 24, 2010, which is the "effective date of the restraint measures."

The Act provides that employee rates of pay in effect on March 24, 2010 cannot be increased before April 2012. Similarly, if an employee is subject to a pay range, such as a salary grid, the maximum amount within the pay range and any steps within the pay range cannot be increased before April 2012. Also, employee benefits, perquisites, or any other payments under a compensation plan in effect on March 24, 2010 cannot be increased prior to April 2012, and no new or additional benefits, perquisites or payments can be provided to an employee before April 2012. The Act specifically states that time off is considered to be a benefit.

There are notable exceptions to these general rules. If authorized under a compensation plan that existed on March 24, 2010, an employee's rate of pay within a pay range may be increased in recognition of any of the following:

1. His or her length of time in employment or in office.
2. An assessment of performance.
3. His or her successful completion of a program or course of professional or technical education.

As a result, increases due to movement on a grid and merit increases appear to be permissible based on the current wording of the Act.

Similarly, only if authorized under a compensation plan that existed on March 24, 2010, an employee's benefits, perquisites or new payments may be increased, or additional benefits, perquisites or payments may be provided to an employee, only if it is in recognition of any of the same three conditions noted above.

The Act stipulates that increases in an employer's costs of providing a benefit, perquisite or payment under a compensation plan, do not constitute an increase in that benefit, perquisite or payment for the purposes of the Act.

The Act will not prevent employers from implementing wage increases that are necessary in order to keep pace with the minimum wage rate established under the *Employment Standards Act, 2000*.

In the event of employment contract renewals, employers will be precluded from changing the compensation plans of employees from what they were as of March 24, 2010, until the beginning of April 2012.

When hiring new employees or placing existing employees in new positions, employers shall be precluded from providing such employees with compensation plans that are greater than the compensation plans that existed on March 24, 2010 for other employees in similar positions with the same employer.

The Act prohibits employers from providing compensation plans to employees after March 31, 2012 that effectively reimburse the employees for the compensation that they did not receive as a result of the operation of the Act.

In the event that a compensation plan conflicts with the Act, the Act will prevail, and the compensation plan will be rendered inoperative.

The Act shall not be interpreted or applied so as to reduce any right or entitlement under the *Human Rights Code* or the *Pay Equity Act*.

The Act contemplates requiring employers to submit compliance reports concerning their compliance with the restraint measures set out in the Act. While there are currently no express penalties described in the Act for a breach of the legislation, it seems clear that, at the very least,

those who breach the legislation will face the consequences of an absence of funding for any non-compliant increases and, as noted above, the compensation plan will be rendered inoperative.

CONCLUSION

Although the Act has only gone through its first reading and is not yet law, it seems highly probable that public sector employers will be expected to comply with these restrictions on a retroactive basis.

When renegotiating expired collective agreements, public sector employers should take guidance from the provincial government's statement that there will be no funding for increased employee compensation.

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