

PUBLIC SECTOR WAGE FREEZE LEGISLATION RECEIVES ROYAL ASSENT

In our recent update entitled, “Provincial Government Introduces Legislation That Would Freeze The Wages of Certain Public Sector Employees,” we discussed the provincial government’s introduction of Bill 16 and the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* (the “Act”), which would freeze the compensation structure for certain public sector employees from March 25, 2010 to March 31, 2012. Bill 16 has since received royal assent and is now law. Accordingly, the restraint measures set out in the *Act* are now in force.

The initial draft of the *Act* appeared to be internally inconsistent by stating, on the one hand, that the legislation affected employees of boards of health (which are often run by municipalities), yet on the other hand, stating that municipalities shall be exempted from the legislation. A recent amendment to the *Act* that occurred prior to it receiving royal assent, has been viewed as clarification that, despite the fact that employees of municipalities are generally not covered, municipally run boards of health are covered by the legislation. However, the legislation on its face remains unclear on that point.

In a recent decision of the Ontario Labour Relations Board, *Ontario Public Service Employees Union v. Municipal Property Assessment Corporation*, [2010] O.L.R.D. No. 1918 (QL), the Union alleged that the Employer had breached its duty to bargain in good faith under the *Labour Relations Act, 1995* because the Employer withdrew its previous offer of wage and benefit increases in light of the introduction of the *Act* and in light of the provincial government’s stated expectation of fiscal restraint on the part of the broader public sector. The Vice-Chair found that, even though unionized employees are not technically covered by the *Act*, a public sector employer in the process of renegotiating an expired collective agreement may use: 1) the *Act*’s restraint measures applicable to non-bargaining employees; and 2) the provincial government’s stated expectation of fiscal restraint on the part of the broader public sector, in order to justify the employer’s position at the bargaining table, without necessarily being found to have violated its duty to bargain in good faith.

* * *

Since the original draft of the legislation revealed that it would be retroactive to March 25, 2010, many public sector employers have been applying its provisions since the legislation was first introduced. Now that the *Act* has become law, all public sector employers must analyse the extent to which they are affected by the *Act* in their compensation practices in order to ensure that they are in compliance with the *Act*.

Please refer to our update entitled, “Provincial Government Introduces Legislation That Would Freeze The Wages of Certain Public Sector Employees,” for a general summary of the *Act* by following the link below.

<http://www.filion.on.ca/uploads/File/Bill16FINAL.pdf>