



What's New in HR Law

Bill 124 Wage Reopener Award: Another Significant Increase in Public Sector Wages

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Bottom Line

On January 22, 2024, Arbitrator Gerry Lee issued his Interest Arbitration Award in [Ontario and OPSEU/SEFPO \(Unified Bargaining Unit\)](#), dealing with the wage reopener provision in the collective agreement. The contractual provision in question existed to address wage issues that would result if Bill 124 was found to be unconstitutional, as it ultimately was by the Ontario Superior Court of Justice on November 29, 2022.

Arbitrator Lee's award accords a 9.5% general wage increase over 3 years to all non-Corrections OPSEU-represented employees in the OPS (except non-law students), and applies retroactively to January 1, 2022. Due to ongoing recruitment and retention issues in some specific classifications (notably nurse classifications), those received additional wage increases.

This award effectively replicates the 2023 Interest Arbitration Award in [Ontario and OPSEU/SEFPO \(Correctional Bargaining Unit\)](#), in that it applies the same general wage increase across the board, and specific increases to nursing classifications and several others.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

Bill 124 and Wage Reopener Provisions

Bill 124 was tabled on June 5, 2019 and came into force on November 8, 2019. It placed a 1% limit on broader public sector wage increases for a three-year “moderation period”. In practice, this meant that no higher wage increase could be collectively bargained or awarded by interest arbitration for any collective agreement captured by the Bill. The provisions defining this “moderation period” depended on the effective dates of the relevant collective agreement, and so could encompass a broad range of dates.

A number of labour organizations brought constitutional challenges to this Bill. On November 29, 2022 the Ontario Superior Court of Justice declared the Bill violated the *Charter* enshrined right to freedom of association, was not saved by s. 1, and was therefore “void and of no effect” ([Ontario English Catholic Teachers Assoc. v. His Majesty, 2022](#)). While the Ontario Court of Appeal heard the Ontario government’s appeal of that decision in June of 2023, we continue to await the Court of Appeal’s ruling.

To address the possibility that Bill 124 might be struck down, many collective agreements bargained after June 5, 2019 included a wage reopener provision. Similar provisions now appear – whether negotiated or awarded – in broader public sector collective agreements for employers across Ontario whose wage bargaining had been constrained by the 1% cap put in place under Bill 124. Even where a broader public sector collective agreement lacks an explicit reopener provision, arbitrators have found that they have jurisdiction to reopen wages.

Arbitrators also seem to be using their power to award greater wage increases over time. With the advent of significant inflation rate hikes and cost of living increases, we are seeing some arbitrators award more significant wage increases than we have seen in previous years. This has been particularly apparent in the hospital and long-term care sectors, though the two Ontario and OPSEU/SEFPO Awards (for both Corrections and Unified bargaining units) show these results may not be limited to the health care sector.

Broader public sector employers heading into bargaining may wish to keep this trend in mind.

Wage Reopener Provisions and Pay Equity

Employers should remember that any amounts negotiated or awarded under these wage reopener provisions are general wage increases. Therefore, absent agreement otherwise, pay equity adjustments may need to be re-calculated in light of any such increases pursuant to a reopener provision, either to female job classes or their male comparator job classes.

Need More Information?

For more information or assistance, contact [Emily Elder](#) at eelder@filion.on.ca or your [regular lawyer](#) at the firm.



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