



What's New in HR Law

Ontario Government's Public Sector Compensation Restraint Legislation Passes

November 12, 2019

Bottom Line

The Ontario Government passed its new public sector wage restraint legislation, Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (the "Act"), on November 7, 2019. The Act was quickly proclaimed in force on November 8, 2019.

We previously provided an overview of the key components of the Act in our Firm's [Labour & Employment Law Insights](#). A day before the Act passed, the Standing Committee on General Government (the "Committee") reviewed it and made a number of changes to the legislation which we have outlined below.

It is expected that public sector unions, including OPSEU and CUPE, will file court challenges alleging that the Act is unconstitutional because it infringes on their right to bargain. We will keep readers apprised of these developments.

Filion Wakely Thorup Angeletti LLP www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453

Hamilton

1 King Street West, Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805

Change in Scope

As noted on June 7, 2019, the *Act* applies to unionized and non-unionized workers employed by the following public sector employers:

- Crown agencies, authorities, boards, commissions, corporations, offices or organizations of persons, a majority of whose directors, members or officers are appointed or elected by the Ontario Government;
- School boards;
- Universities and colleges;
- Hospitals;
- Long-term care homes;
- Ornge;
- Children's aid societies; and
- Not for profit organizations that received at least \$1,000,000 in funding from the provincial government in 2018.

The Committee added a number of employers that are excluded from the *Act*. The full list of excluded employers is now as follows:

- Municipalities;
- Local boards established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006*;
- Boards, commissions, corporations, offices or organizations of persons, a majority of whose members, directors or officers are appointed or chosen by or under the authority of the council of a municipality;
- Indigenous communities;
- Authorities, boards, commissions, corporations, offices or organizations of persons, including a council of the band within the meaning of the *Indian Act* (Canada), a majority of whose members, directors or officers are appointed or chosen by or under the authority of one or more Indigenous communities;
- A First Nations police governing authority referred to in section 54 of the *Police Services Act*; and
- Unless otherwise specifically provided for in the regulations, an organization that undertakes its activities for the purpose of profit to its shareholders.

Moderation Period

The *Act* establishes a three-year moderation period (the "Moderation Period") in which increases to public sector employees' total compensation are limited to one percent (1%) every twelve months. As previously reported, "compensation" is broadly defined by the *Act* to include all salary, benefits, perquisites, and all forms of discretionary and non-discretionary payments.

For non-unionized employees, the Moderation Period can begin on any date selected by the employer that is on or before January 1, 2022 (retroactive to June 5, 2019). However, if a compensation plan for non-unionized employees provides for a salary increase proportionate to an increase in the salary of unionized employees under a collective agreement, the applicable

Moderation Period for the non-unionized group will be the same as that which is applicable to the unionized employees under the collective agreement.

For unionized employees, the Moderation Period commencement date depends on the status of the collective agreement as of June 5, 2019. By default, the *Act* provides that the Moderation Period will commence for unionized employees:

- The day immediately after the current collective agreement expires if the collective agreement is in operation on June 5, 2019.
- The day immediately after the expiry of the previous collective agreement if the previous collective agreement has expired on June 5, 2019 and no renewed collective agreement is in operation on that date (unless the parties reached a settlement for a collective agreement on or before June 5, 2019, in which case the Moderation Period will commence the day immediately following the expiry of the collective agreement effected by the settlement).
- The commencement date of the collective agreement if the parties are bargaining for a first collective agreement.
- After the awarded collective agreement expires if a collective agreement is determined by interest arbitration award made on or before June 5, 2019.

After the Committee's amendments, the *Act* was changed in order to provide greater certainty regarding the *Act's* application to bargaining parties who settled a collective agreement, or received an interest arbitration award, in the period between when the *Act* was introduced and when it was proclaimed in force. The result is that, where the prescribed requirements are met, the Moderation Period will commence after the expiry of any collective agreement effected either by way of a settlement made on or before June 5, 2019, or by way of an arbitration award that was issued between June 6 and November 7, 2019.

The Minister can also make regulations extending the commencement of the Moderation Period for collective agreement settlements meeting the prescribed requirements that were entered into between June 6 and November 7, 2019.

Exceptions to Salary Rate Cap

The *Act* provides an exception to the 1% annual cap on salary rate increases for employees during the Moderation Period such that salary rate increases which are based on: (i) seniority; (ii) performance, or (iii) the worker's completion of a program or course of professional or technical education, are permitted.

Increases during the Moderation Period to the cost of providing an existing benefit (for example, an increase in group benefit or insurance premiums) do not count towards the annual cap.

The Committee further amended the *Act* to include these additional exceptions to the annual cap:

- Voluntary exit programs approved by the Management Board of Cabinet.
- Certain pension contribution offsets where an employer is converting a single employer pension plan into a jointly sponsored pension plan.

- Prescribed payments to be specified by regulation.

Ministerial Oversight

As an enforcement mechanism, the *Act* gives the Management Board of Cabinet broad discretion to compel the provision of information pertaining to collective bargaining or compensation. The *Act* also provides the Minister authority to make orders declaring that a collective agreement or an interest arbitration award is inconsistent with the *Act*. The Minister has the power to order the parties back to the bargaining table or to arbitration, as the case may be, if a collective agreement is declared inconsistent by such order.

The Committee amended the *Act* so that where a collective agreement or arbitration award applies to multiple employers, and some are not covered by the scope of the *Act*, the Minister's order will only apply with respect to those employers to whom the *Act* applies.

Check the Box

The *Act* has come into force and will have a significant impact on the public sector employers to which it applies. The public sector employers covered by the *Act* will need to determine the impact on any of their collective agreements and/or non-union compensation plans. In addition, the relevant considerations in negotiating a collective agreement will drastically change where an agreement is negotiated that overlaps with the legislated Moderation Period. Employers will need to determine the Moderation Period commencement in respect to unionized and non-unionized employee groups and plan accordingly. Assessment of the value of non-salary based compensation may be necessary to address monetary proposals in negotiations or interest arbitration, or otherwise ensure that compensation increases are not inconsistent with the *Act*.

Need more information?

If you would like more information understanding the impact of the *Act* on your organization, please contact [Lucas Mapplebeck](#) at 905-972-6875, [Melanie McNaught](#) at 416-408-5561, or speak to your regular lawyer at the firm.



management labour and employment law



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca