



# What's New in HR Law

## Ontario Amends Broader Public Sector Wage Restraint Legislation

July 4, 2017

### **BOTTOM LINE**

Ontario Regulation 187/17 was enacted on June 8, 2017, and makes significant changes to the *Executive Compensation Framework*, Ontario Regulation 304/16 (the "Framework") of the *Broader Public Sector Executive Compensation Act, 2014* (the "BPSECA").

Three of the most important changes are: new limits on a designated employer's overall executive compensation; a new method for calculating limits on individual executive compensation; and revised obligations of designated employers with respect to implementing the required compensation programs.

### **Background: The BPSECA and the Framework**

The BPSECA was proclaimed on March 16, 2015. It established basic guidelines for capping the salaries and other benefits offered to designated executives by designated employers in the broader public sector. These designated employers include public hospitals, school boards, universities, and community care access corporations. The Ontario Government estimates that there are approximately 340 designated employers in the province.

The BPSECA defines "designated executives" as including employees and office holders of designated employers who receive annual cash compensation of \$100,000.00 or more and who hold the title of CEO, president, vice president, chief administrative officer, chief operating

officer, chief financial officer, chief information officer, or any other executive position or office regardless of title.

The Framework was enacted on September 6, 2016. Its purpose is to provide designated employers with a detailed process to create and implement the requisite executive compensation program.

The Framework also prohibits designated employers from providing a number of perquisites to designated executives, including: signing and retention bonuses, cash housing allowances, termination payments that are payable in the event of a termination for cause, and termination payments exceeding 24 months of the designated executive's average monthly salary.

## **Key Changes to the Framework**

### **1. New limits on overall compensation**

One of the more important changes made to the Framework is the creation of a new "executive salary and performance-related pay envelope". The envelope imposes a limit on the maximum annual rate of increase to a designated employer's overall executive payroll, and it is applicable to all designated executives within the organization.

When establishing the maximum rate of annual increase in the salary and performance-related pay envelope, only the following factors may be considered:

- The financial priorities and the compensation priorities of the Ontario Government;
- Recent executive compensation trends in the Canadian public sector and broader public sector in the industry within which the designated employer competes for executives;
- A comparison between the percentage of the operating budgets used for executive salary and performance-related pay between the employer and comparator organizations;
- The effect on hiring and retaining executives of any salary and performance-related pay differential between the executive and the employees or office holders who directly report to the executive; and
- Any significant expansion in the operations of the designated employer that is not the result of a significant organizational restructuring.

### **2. Change in methodology to calculate individual designated executive compensation**

The recent amendments to the Framework also changed the method that designated employers must follow to calculate adjustments to the salary and performance-related pay of individual designated executives. In accordance with the change, annual increases in salary and performance-related pay of individual designated executives are not permitted to exceed the lesser of:

- The average rate of increase in salary and performance-related pay for the employer's non-executive managers for the most recent one year period; or
- The reported provincial public sector wage settlement trends.

### 3. Revised employer obligations

The new regulations also require that any annual increase in a designated employer's salary and performance-related pay envelope be approved by the Minister of the Ministry that oversees the designated employer and its board of directors. In addition, the comparator organizations used to establish salary and performance-related pay caps must now be approved in writing by the Minister of the Ministry that oversees the designated employer.

#### Check the Box

- Designated employers are strongly encouraged to review existing and/or draft compensation programs to ensure compliance with the changes to the Framework.
- All designated employers are required to submit a draft compensation plan to the Minister of the Ministry that oversees the designated employer. Due to the extensive changes to the Framework, the Ontario Government has extended the submission deadline to September 29, 2017.
- Any executive compensation programs that were posted prior to the June 8, 2017 amendments are grandparented; however, even where grandparenting is applicable, any subsequent changes to executive compensation likely will require a new compensation program to be drafted and implemented in compliance with the current version of the legislation.
- A new guide titled "Broader Public Sector Executive Compensation Guide" is available on the Ontario Government's website to assist designated employers with navigating the implementation process.

For further information, please contact Russell D. Groves at 416.408.5563 or your regular lawyer at the firm.



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