Executive Compensation Freeze Returns To The Broader Public Sector

August 14, 2018

On August 13, 2018, the Ontario government filed Regulation 406/18, and revoked Regulation 304/16, under the Broader Public Sector Executive Compensation Act, 2014.

Effective immediately, all designated employers in the broader public sector are restricted from providing executive compensation increases until the government completes a regulatory review of the compensation program.

On August 13, 2018, the Ontario government filed Regulation 406/18 (the "New Regulation"), and revoked Regulation 304/16, under the Broader Public Sector Executive Compensation Act, 2014 ("BPSECA"). The New Regulation replaces the recent executive compensation programs with strict restraint measures similar to those under predecessor legislation. The effect of the New Regulation is that Part II.1 of the Broader Public Sector Accountability Act, 2010, the legislation that has operated since 2012, is no longer in effect and is instead replaced by the compensation framework under the New Regulation. All designated employers are now subject to the compensation framework set out in the New Regulation, including those who had compensation frameworks approved and those who did not. All compensation frameworks developed under Regulation 304/16 are null and void to the extent they provide for compensation increases that are inconsistent with the New Regulation.

The New Regulation applies to the same designated employers (such as public hospitals, school boards, colleges and universities) and designated executives (executive-level managers earning $100,000 or more) as the BPSECA and Regulation 304/16. It replaces the recent compensation framework – including the comparator-based individual pay caps and incrementally increasing pay envelope – with the following key provisions, which are effective immediately as of August 13, 2018:

- The salary provided to each designated executive position must be less than or equal to the amount provided to the person occupying that position on the effective date of August 13, 2018 (or, if the position is vacant on that date, the amount provided to the most recent incumbent). "Salary" means the salary actually being earned by the executive, and not any raises that would have happened after that date nor any other amount in the position's salary range.
- The employer's "performance-related pay envelope" must be less than or equal to the total performance-related pay disbursed to designated executives during

the most recent pay year before the effective date, and must be reduced or increased on a pro-rated basis when executive positions are vacated, eliminated, filled, or created.

- Employers may not provide any new other element of compensation (such as car allowances or lieu payments) for a designated executive position as of August 13, 2018. Additionally, other elements of compensation are capped at what they were on August 13, 2018 and may not be increased. However, it is not considered an "increase" if a benefits plan is amended for "all or most of the employees of the employer", or if there is an increased cost for providing the same benefits.
- Newly-hired executives must be paid the same or lower salary as the prior incumbent, the increase to the employer's performance-related pay envelope must be less than or equal to what was provided to the prior incumbent, and the new hire may not be provided with other elements of compensation beyond those provided to the prior incumbent.
- For newly-created positions where there was no prior incumbent, compensation is limited to that provided to the "most similar position at the designated employer".
    - The prohibitions on certain elements of compensation from the prior regulation remain in place. Employers may not provide designated executives with the following:
    - Payments or other benefits provided in lieu of perquisites;
    - Signing bonuses;
    - Retention bonuses;
    - Cash housing allowances;
    - Insured benefits not generally provided to non-executive managers;
    - Termination pay, including pay in lieu of notice of termination and severance pay, in excess of 24 months' base salary;
    - Termination pay that is payable in the event of termination for cause;
    - Paid administrative leave, with limited exception for certain executives at colleges or universities; and
    - Payments in lieu of administrative leave.

The government's August 13, 2018 memorandum provides that the government may request employers to report on compliance with the New Regulation.

The government has committed to reviewing the New Regulation by June 7, 2019. The review will evaluate the effectiveness of the New Regulation in furthering the purpose of the BPSECA.

The government's August 13, 2018 memorandum also stated that "opportunities will be available for [employers], other stakeholders and interested parties to provide input as part of this review."

If you have questions about this important legislative update, please contact a member of the Labour & Employment group.

By

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