

Ontario caps compensation increases for public servants and the broader public sector

Date : November 13, 2019

Bill 124, the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (the “Act”), received Royal Assent on November 7, 2019, and was proclaimed in force on November 8, 2019.

Readers of Focus will recall that the legislation operates to limit compensation increases for both unionized and non-unionized employees in the Ontario public service and the broader public sector (see [Ontario introduces legislation to limit compensation increases in the public sector](#)). As can be expected, the legislation has come under heavy fire with unions representing impacted employees gearing up for constitutional challenges.

Application of Bill 124

Bill 124 is drafted in a sweeping nature and applies to the following employers:

- The Ontario government and all of its agencies, authorities, boards, commissions and corporations, offices or organizations;
- School boards under the *Education Act*;
- Universities and colleges;
- Hospitals under the *Public Hospitals Act* and the University of Ottawa Heart Institute;
- Licensees under the *Long-Term Care Homes Act, 2007* (unless the licensee is a for-profit organization);
- Ornge;
- Children’s aid societies;
- Not-for-profit organizations that received at least \$1 million in funding from the Government in 2018 (or such later year as may be specified by regulation);
- Ontario Power Generation Inc. and each of its subsidiaries [1]; and
- Any other organization that is prescribed by regulation.

Exclusions from Bill 124

Bill 124 specifically excludes the following organizations from the application of the Act:

- Municipalities;

- Local boards as defined in the *Municipal Act, 2001*;
- Authorities, boards, commissions, corporations, offices or organizations, a majority of whose members, directors or officers are appointed or chosen under the authority of the council of a municipality;
- For-profit organizations (unless otherwise specified by regulation);
- Employees or classes of employees that may be specified by regulation;
- Designated executives under the *Broader Public Sector Executive Compensation Act, 2014*; and
- Judges, deputy judges, justices of the peace or case management masters.

Bill 124 was amended by Standing Committee to also exclude the following organizations:

- Local boards as defined in the *City of Toronto Act, 2006*;
- An Indigenous community (defined as a band within the meaning of the *Indian Act (Canada)* or such other entity as may be prescribed by regulation);
- 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 under the authority of one or more Indigenous communities; and
- A police governing authority relating to a First Nation reserve under section 54 of the *Police Services Act*.

Compensation Increases Capped

For unionized and non-unionized employees falling within the application of the Act, Bill 124 caps any increase in their compensation to 1% per year for a three year “moderation period”. The legislation defines “compensation” in a very broad way such that it literally captures anything paid or provided to or for the benefit of an employee. As a result, the 1% cap to compensation increases applies to salary, benefits, perquisites, and “all forms of non-discretionary and discretionary payments”.

Exemptions for Certain Increases

There are however certain salary rate increases that would not be limited by the Act. Bill 124 carves out salary increases in respect of:

- The employee’s length of time in employment;
- An assessment of performance; or

- The employee's successful completion of a program or course of professional or technical education.

provided however that these increases are provided for in the collective agreement, or, in the case of a non-union employee, the compensation plan.

Bill 124 was amended by Standing Committee to provide for the following additional exemptions for certain types of payments:

- Payments made pursuant to a voluntary exit program approved by the Management Board of Cabinet; and
- An increase in salary rate, an incremental increase to existing compensation or new compensation designed to offset a required increase in member contribution to a pension plan as the result of the conversion from a single employer pension plan to a jointly sponsored pension plan.

Moderation Periods

The three-year period during which the compensation cap applies is referred to in the legislation as a "moderation period".

i. Non-Unionized Employees

For non-unionized employees that fall within the application of the Act, the moderation period commences on the earlier of:

- A date to be selected by the employer that is after June 5, 2019; or
- January 1, 2022.

An exception to this rule is provided for non-represented employees under compensation plans by which salary increases correspond to those of represented employees under collective agreements. In these cases, the employee's moderation period will correspond to the applicable collective agreement.

ii. Unionized Employees

For unionized employees that are captured by Bill 124, the commencement date of the moderation period depends on the status of their collective agreement as of June 5, 2019.

Standing Committee amendments made to Bill 124 clarify when the three-year moderation period would apply to collective bargaining settlements reached or interest arbitration awards issued since the Bill was first introduced on June 5, 2019, and before the Bill came into effect on November 8, 2019.

The following chart provides a summary of how the commencement date for the three-year moderation period will be determined:

Status of Collective Agreement as of June 5, 2019	3-Year Moderation Period Begins
In operation	Day after the collective agreement expires
Expired (and no new collective agreement in operation)	Day after the day the collective agreement expired
Bargaining for first collective agreement	Commencement date of the first collective agreement