

Ontario's omnibus legislation impacting pay transparency, collective bargaining in the fire sector and pensions receives Royal Assent

Date : December 17, 2018

On November 15, 2018, the Ontario government introduced Bill 57, the *Restoring Trust, Transparency and Accountability Act, 2018* ("Bill 57"). Bill 57 received Royal Assent on December 6, 2018.

Bill 57 amends over 40 statutes in Ontario and contains significant changes to, among other things, pay transparency, interest arbitration in Ontario's fire sector and pension administration and benefits.

Bill 57 "defers" *Pay Transparency Act, 2018*

Bill 57 defers the coming into force of the *Pay Transparency Act, 2018* ("TPA") to an unspecified future date. Although not in effect, the TPA would prohibit employers from seeking compensation history information about applicants for positions. Employers would also be required to include in any publicly advertised job posting information about the expected compensation for the position. Large employers (100 or more employees) would be required by the TPA to prepare pay transparency reports that include information about the employer's workforce composition and differences in compensation with respect to gender and other prescribed characteristics. The TPA also provided anti-reprisal and enforcement provisions, and gave the Ontario Labour Relations Board the authority to hear complaints. The TPA received Royal Assent on May 7, 2018 and was set to come into force on January 1, 2019. The coming into force of the TPA is deferred indefinitely.

Bill 57 reforms interest arbitration in the fire sector

Bill 57 significant changes to the *Fire Protection and Prevention Act, 1997* ("FPPA") will dramatically reform interest arbitration in Ontario's fire protection sector. Many of these changes may assist municipalities in collective bargaining in this sector. The first noteworthy amendment is the removal of the option to have a board of arbitration decide the matters in dispute. Bill 57 requires any interest arbitration not already commenced to be conducted by a single arbitrator agreed to by the parties, or the Minister in the event that the parties cannot agree.

Bill 57 also modifies the statutory criteria that the arbitrator must consider. The FPPA set out the following as the criteria that was to be considered in making a decision:

1. The employer's ability to pay in light of its fiscal situation.

2. The extent to which services may have to be reduced, in light of the decision, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality.
4. A comparison, as between the firefighters and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and retain qualified firefighters.

Bill 57 establishes the following new criteria:

1. A comparison, as between the employees and other employees in the public and private sectors, of the terms and conditions of employment.
2. A comparison of collective bargaining settlements reached in the same municipality and in comparable municipalities, including those reached by employees in bargaining units to which the *Labour Relations Act, 1995* applies, having regard to the relative economic health of the municipalities.
3. The economic health of Ontario and the municipality, including, but not limited to, changes to labour market characteristics, property tax characteristics and socio-economic characteristics.
4. The employer's ability to attract and retain qualified firefighters.
5. The interest and welfare of the community served by the fire department.
6. Any local factors affecting the community.

As can be seen, the new criteria will narrow an arbitrator's focus, at least in terms of the statutory criteria, to local circumstances, including the economic health of the municipality, the interest and welfare of the community, and other collective bargaining settlements in the same municipality and in comparable municipalities.

Bill 57 also requires an arbitrator to provide written reasons for a decision if requested by either party. The reasons would have to "clearly demonstrate" that the arbitrator considered the criteria on which a party made submissions. An arbitrator will be required to keep the Minister informed of the progress of the arbitration. This is to facilitate the Minister's issuance of any necessary order to ensure that a decision is rendered within a reasonable time period.

Bill 57 protections for volunteer firefighters

Another dramatic change to the FPPA that would be ushered in by Bill 57 is the new protection for "two-hatters". The proposed legislation will prohibit employers and fire associations from penalizing firefighters that also work as volunteer firefighters. Employers and employers' organizations would be prohibited from discharging or refusing to employ or assign a firefighter because the person has worked or intends to work as a volunteer firefighter. Associations would face similar prohibitions and would not be able to deny membership, suspend, expel, or fine a

firefighter because that firefighter worked or intended to work as a volunteer firefighter. These prohibitions apply even where the volunteer work is within the jurisdiction of the association.

The Bill 57 amendments to the FPPA came into effect on December 6, 2018.

For further information please contact [Sebastien Huard](#) at 613-940-2744 and [J.D. Sharp](#) at 613-940-2739.

Bill 57 amendments to the *Pension Benefits Act*

Electronic Designation

Bill 57 introduces significant changes to the *Pension Benefits Act* (“PBA”). Bill 57 permits members, former members and retired members to designate beneficiaries electronically and explicitly states that it overrides anything to the contrary in the *Succession Law Reform Act*. This means there will now be clear legislative authority for plan administrators to accept electronic beneficiary designations. Bill 57 does state that an administrator must comply with any prescribed requirements, however, at this time no regulatory amendments have been tabled.

Variable Benefit Accounts

Bill 57 also modifies the unproclaimed provisions of the PBA relating to variable benefit accounts. The existing regime, which is not yet in force, would permit defined contribution plans to establish variable benefit accounts permitting retired members to receive benefits directly from a plan. Bill 57 permits a retired member to apply to the administrator to withdraw or transfer up to 50 per cent of the amount transferred to the retired member’s variable benefit account at the time the account was established. The application must be made within 60 days after the establishment of the variable benefit account and must be in accordance with any restrictions or requirements prescribed by regulation. Bill 57 also modifies the definition of the term “specified beneficiary”, applicable to variable benefit accounts, to include only a spouse of a retired member, as opposed to a designated beneficiary.

Discharge of Administrators

Bill 57 amends the discharge provisions relating to the purchase of single employer pension plans and extends the statutory discharge of administrators from annuities purchased by former members and retired members to include annuities purchased by survivors. Bill 57 also sets the stage for funding requirements for annuity purchases. These requirements would apply to annuity purchases occurring on or after the day that Bill 57 receives Royal Assent. The amendments also deem an administrator to not be discharged if the annuity purchase did not meet prescribed

requirements. Bill 57 also makes certain amendments relating to enforcement powers including the ability to file an order for repayment with interest in the Superior Court of Justice in the event that the purchase does not satisfy the statutory requirements.

Unlocking for non-residents

Bill 57 permits the unlocking of a deferred pension benefit if the former member is a non-resident of Canada for the purposes of the federal *Income Tax Act*, and, if the former member has a spouse, the spouse waives any rights they may have in respect of the pension fund. This change would bring Ontario in line with several other provinces that already provide for unlocking for non-residents.

Jointly Sponsored Pension Plans and requirements regarding defined contribution benefits

Bill 57 amends the provisions governing the conversion from a single-employer plan to a jointly sponsored pension plan. This amendment operates to clarify that if the single employer pension plan provides defined contribution benefits as well as defined benefits, the transfer of assets in respect of the defined contribution benefits must comply with any prescribed requirements. Currently no such requirements have been prescribed.

For further information please contact [Mark Newton](#) at 416-846-6855.

In our view

Most employers, particularly large employers, may take comfort in the deferral of the PTA and its potentially onerous reporting requirements. Municipalities should begin to become familiar with the changes to the FPPA for their next round of collective bargaining. Employers and pension plan administrators should also begin to familiarize themselves with the Bill 57 amendments.