



Ontario Broader Public Sector Executive Compensation Framework: Implications and Key Steps

Background

On October 29, 2014, the Government of the Province of Ontario introduced legislation (*The Broader Public Sector Executive Compensation Act, 2014*)¹ aimed at managing executive compensation within the broader public sector in Ontario by means of “compensation frameworks”, which are defined as follows

“A compensation framework ... may provide for and limit the compensation and payments and elements of compensation and payments that may be provided to designated executives, including salaries, salary ranges, benefits, perquisites, discretionary and non-discretionary payments, payments payable on or in connection with termination, performance plans, incentive plans, bonus plans, allowances and any other form of remuneration.”

The Act came into effect on March 16, 2015, but aside from requests in April 2015 to the covered employers to provide compensation information, no further directive was provided until September 6, 2016 when the Province issued *Regulation 304/16 “Executive Compensation Framework”*² and a related *Guide*³, requiring compliance by all designated employers for all their designated executives. Proponents have until September 5, 2017 to comply.

Eligibility

The Broader Public Sector for the purposes of this legislation is defined as a group of designated employers and executives.

Designated employers include all hospitals, education boards, universities, colleges, provincial utilities, and community care access corporations across the province, plus certain prescribed organizations, such as the LCBO, OLG, Ornge, the OSC, and the WSIB. Municipalities are excluded, however, as are their local bodies.

Designated executives include all organization heads, vice presidents, chief administrative officers, chief financial officers, chief information officers and other executive positions regardless of title if their annual cash compensation potential is \$100,000 or more.

¹ <https://www.ontario.ca/laws/statute/14b13>

² <https://www.ontario.ca/laws/regulation/160304>

³ <https://www.ontario.ca/page/executive-compensation-framework-guide>



Implications for Employers

Key to this legislation is that the Regulation and the Guide requires the employer to develop its own compensation framework. Once developed the framework must be posted on its public web site for 30 days and the public given an opportunity to comment on how executives will be paid.

The Regulation and Guide should be consulted directly as they are extremely detailed and prescriptive. Our goal in this bulletin is to help our clients appreciate the decisions and activities that lie ahead. We encourage affected employers to begin this process quickly.

Key Steps

Key steps in the process include the following:

1. Review your current compensation philosophy and strategy.
 - Is it compliant with the Regulation?
2. Determine which positions meet the Act's "designated executive" definition (if not done previously).
 - Can some of the positions be grouped? E.g. all VPs?
 - Is creating executive levels or grades a possibility?
3. Select comparator organizations
 - Determine the best sources of competitive data, focusing on salary range and incentive payout maximums. Select at least 8 comparator organizations that meet the specific requirements of the Regulation
 - Request Treasury Board approval of any comparators that are not Canadian public sector employers
 - Conduct a custom compensation survey if target organizations do not participate in any existing published surveys provided by consulting firms. Our methodology  is available for any of your custom survey needs. Analyze the competitive information
4. Develop salary caps and performance-related pay caps for each position and each position group, based on no more than the 50th percentile of the competitive analysis
 - For each individual executive, determine whether the current compensation exceeds the cap for his or her position⁴
 - Prepare for the end of the three-year grand-parenting period
5. Prepare a draft of the executive compensation program that includes:
 - The organization's executive compensation philosophy and strategy
 - A description of the comparator organizations and of their comparator positions and why they were chosen
 - The maximum salary and performance-related pay for each position and/or group of positions
 - A description of any other compensation elements that are not generally provided to non-executive managers if applicable, and the reasons why the element is required

⁴ If the compensation of an executive that was in effect prior to September 6, 2016 subsequently exceeds the finalized compensation framework, the excess can remain in effect without penalty for up to three years, but *cannot be increased*. Otherwise, any compensation over and above the framework is void, unenforceable and subject to penalties. As a result, covered organizations will need to freeze the compensation of all their current executives until the compensation framework has been finalized. In addition, executives newly hired or promoted will need to be advised that their compensation may need to be reduced if it is determined at a later date that it exceeds the maximums under the finalized compensation framework.



6. Post the executive compensation program write-up on the organization's public website for at least 30 days
 - o Establish a process for collecting and retaining public feedback on the draft program
7. Revise the program after giving due consideration to the public feedback
8. Secure approval of the program from the organization's overseeing Ministry
9. Post the finalized program on the organization's public website and on an ongoing basis
10. Have the board chair or other highest ranking officer attest to Treasury Board that the compensation program is compliant with all the terms of the framework.

Commentary

It is our view that in addition to the actual compensation framework, one of the important outcomes of this process is the production of a clearly communicated disclosure compensation framework able to withstand scrutiny by the public. In this regard, this task and the steps leading up to it's similar to those undertaken by publicly traded companies in the production of their Management Information Circulars. Among other things, these enterprises begin with a clearly articulated executive compensation philosophy and strategy, identify peer organizations, show that compensation is aligned with their market and discuss the magnitude and reasons for the compensation company officers receive.

Designated employers will need to develop a time line that works backwards from September 5, 2017 and which allows sufficient time for each of the steps to be completed. Thus, we recommend making this a priority and starting now, rather than wait until early in the new calendar year.

We are available to discuss these matters with you in more detail and will be issuing more communiques and position papers as the Government of the Province of Ontario elaborates its regulations.

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