

NOVEMBER, 2014

ONTARIO INTENDS TO REIN IN EXECUTIVE COMPENSATION IN THE BROADER PUBLIC SECTOR:

BILL 8 SUMMARY

On October 29, 2014, the Government of the Province of Ontario introduced legislation¹ designed to control and constrain executive compensation within the broader public sector in Ontario. The proposals cover all hospitals, education boards, universities, colleges, provincial utilities, and community care access corporations across the province, and a long list of prescribed organizations, such as the LCBO, OLG, Ornge, the OSC, and the WSIB. Municipalities are excluded, however, as are their local bodies.

COMPENSATION FRAMEWORKS

The legislation proposes to rein in public sector executive compensation by establishing “compensation frameworks” and, if need be, “sector-specific” hard caps as follows:

“A compensation framework may govern the compensation that may be provided by a designated employee to a designated executive and ... 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.”²

The only notable exception in the above list is pension benefits.

COVERED EMPLOYEES

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

Management Board may issue directives to employers to provide information on all aspects of covered employee compensation, including policies, plan provisions, actual compensation amounts, and individual agreements, as well as compensation studies.

COMPENSATION COMPARISONS

The focus of the Ontario proposals is on public sector comparables, with a “sector specific” emphasis: there is no reference in the news releases to including private sector comparables.

In this context, the Institute for Competitiveness and Prosperity (IFCP) released a Working Paper earlier this year on the compensation of public sector workers in Ontario vs. the private sector for 47 selected occupations. One of the occupations was “senior management”, which represented on average 0.7% of total public sector employment in Ontario. The study found that:

“... workers in high-ranked managerial positions in the government earn on average 13.8 percent less than their private sector counterparts, given similar wage-generating qualifications.”³

“Not only are managers paid less than their counterparts in the private sector, but they are also publicly denounced for earning seemingly high wages.”⁴

¹ Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014

² Bill 8, 6. (3)

³ “The Realities of Ontario’s Public Sector Compensation”, IFCP Working Paper 19, February 2014, page 16

⁴ Ibid, page 17

IMPLEMENTATION

The Bill 8 implementation process involves the collection of compensation information by Management Board from the affected employers, consultation with the stakeholders and phased implementation. The government says it aims to begin the rollout of compensation frameworks approximately six months after the legislation comes into force: this time frame is likely to be very optimistic, as in our experience, the data collection phase alone can take six months, let alone the time required for analysis and consultation. A more realistic effective date is likely a year away.

If an executive's existing compensation exceeds the compensation framework prior to its effective date, the excess can remain in effect without penalty, but cannot be increased (even if adjustments were provided for in his or her agreement). Otherwise, any compensation over and above the framework is void, unenforceable and subject to penalties.

OTHER PROVINCIAL LEGISLATION

The Ontario proposals are not entirely unique. In 2008, British Columbia introduced legislation⁵ that places restrictions on the compensation paid by public sector employers. The following is a summary of the BC rules:

- Public sector employers must have in place compensation plans that are approved by the Minister responsible for the Act
- Compensation that exceeds an approved compensation plan is a debt payable to the government
- Severance payments must not exceed 18 months: a severance grid applies to CEOs, Deputy Ministers and School Superintendents which requires 60 months service with the employer to be eligible for the 18 month maximum

- Unused vacation time must be taken or be paid out by the end of the year following the year in which it was accumulated
- Accumulated sick leave can only be used for illness
- Retirement allowances can only be paid on retirement and an employee may not receive both a retirement allowance and a severance payment
- Public sector employers are required to submit employment contracts and compensation reports to the government within 15 days
- Employers are required to make contracts available to the public on request
- Employers are required to make comprehensive web-based disclosures for the CEO and the next four highest paid/ ranking executives earning a base salary of at least \$125,000 as part of their annual reporting
- The practice of double dipping (collecting both a severance and receiving a salary from a public sector employer) is prohibited.⁶

IMPLICATIONS

The restrictions on Ontario public sector executive compensation will inevitably limit the supply of candidates for executive positions that can be accessed outside the public sector.

In addition, they may increase the incentive for public sector organizations to outsource operations that can be provided by the private sector.

The overall result over time could be to make the leadership of the public sector more inbred and insular.

⁵ British Columbia Public Sector Employers Act

⁶ Executive and Excluded Compensation, September 2014, page i Summary

For further information, please contact the following McDowall executive compensation consultants:

Robert Levasseur

Senior Consultant & Principal

Email: blevasseur@mcdowallassociates.com

Telephone: (416) 357-0536

Ray Murrill

Senior Consultant

Email: ray.murrill@mcdowallassociates.com

Telephone: (416) 318-0394

Dom D'Alessandro

Senior Consultant

Email: ddalessandro@mcdowallassociates.com

Telephone: (647) 531-3268

To learn more about McDowall Associates, please call us at (416) 644 6584 or visit www.mcdowallassociates.com

ABOUT MCDOWALL

mcdowallassociates.com

141 Adelaide St. W., Suite 905
Toronto, ON M5H 3L5 Canada
T 416 644 6584
F 416 361 0931

Fully Independent Experts

McDowall Associates is a fully independent consulting firm offering a complete range of advisory services for Boards and management.

Strategic & Evidence-based Approach

Providing market intelligence based on research is foundational to the consideration of alternative strategies.

Subject Matter Experts

Experience matters. Our associates have in-depth knowledge of executive compensation and related areas of practice including Expert Witness Consulting.