

*The following schedule has simply been downloaded by OCASA from the site listed below. This is the legislation that provides direction to employers about wage restraint, its application and its duration. Among other directives, this schedule gives definition to the performance pay envelope and how it is applied, as well as compensation direction when there is restructuring or new hiring.*

*OCASA's understanding is that Colleges within CAAT have determined the executive designation according to their college structure, either by a payband level or by title.*

## **Omnibus Bill 55**

### **Schedule 4**

[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2600&detailPage=bills\\_detail\\_the\\_bill](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2600&detailPage=bills_detail_the_bill)

### **Broader Public Sector Accountability Act, 2010**

1. The Broader Public Sector Accountability Act, 2010 is amended by adding the following Part:

part II.1

compensation arrangements

Interpretation

Interpretation

7.1 (1) In this Part,

“cash compensation” means compensation that is the sum of salary and non-discretionary and discretionary payments, including, but not limited to, performance pay, incentive pay, bonuses and allowances; (“rémunération en espèces”)

“compensation” means anything paid or provided, directly or indirectly, to or for the benefit of a person who performs duties and functions that entitle him or her to be paid, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments; (“rémunération”)

“compensation plan” means the provisions, however established, for the determination and administration of a person’s compensation; (“régime de rémunération”)

“designated employer” means an employer to which this Part applies by virtue of section 7.2; (“employeur désigné”)

“designated executive” means an employee to whom this Part applies by virtue of section 7.3; (“cadre désigné”)

“designated office holder” means an office holder to whom this Part applies by virtue of section 7.3; (“titulaire de charge désigné”)

“effective date”, in relation to a designated employer, designated executive or designated office holder, means the date determined under section 7.4; (“date d’effet”)

“performance pay” means compensation paid by an employer to an employee or office holder in respect of an assessment of his or her performance; (“prime de rendement”)

“prescribed” means prescribed by a regulation made under this Part; (“prescrit”)

“restraint measure” means a requirement set out in section 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13 or 7.16; (“mesure de restriction”)

“restraint period”, in relation to a designated employer, designated executive or designated office holder, means the period beginning on the applicable effective date and ending on the earlier of,

(a) the date specified in section 7.5, and

(b) the date the employer or individual ceases to be a designated employer, designated executive or designated office holder, as the case may be; (“période de restriction”)

“salary” means compensation that is the fixed or ascertainable amount an employee or office holder is entitled to be paid for each pay period. (“traitement”)

### **Time off**

(2) For greater certainty, time off is a benefit for the purposes of this Part.

Deemed employees

(3) For the purposes of this Part, the directors, members and officers of an employer are deemed to be employees of the employer.

**Employer of office holders**

(4) A reference in this Part to the employer of an office holder is a reference to the employer to which the office holder is appointed, and the use of this terminology is not intended to create a deemed employment relationship between them for the purposes of this or any other Act or any law.

**Application****Employers**

7.2 This Part applies to the following employers:

1. Every public hospital and the University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa.
2. Every school board.
3. Every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating annual operating grants and entitlements.
4. Hydro One Inc. and each of its subsidiaries.
5. Independent Electricity System Operator.
6. Ontario Power Authority.
7. Ontario Power Generation Inc. and each of its subsidiaries.
8. Such other authorities, boards, commissions, committees, corporations, councils, foundations or organizations as may be prescribed for the purposes of this section.

**Employees and office holders**

7.3 (1) Unless a regulation excludes an employee or office holder or a class of employees or office holders from the application of this Part, this Part applies to an employee or office holder of a designated employer, if the condition in paragraph 1 and the condition in paragraph 2 are both met:

1. The employee or office holder,
  - i. is the head of the designated employer, regardless of whether the title of the position or office is chief executive officer, president or something else,
  - ii. is a full-time member of the board of directors, board of governors, board of trustees or other governing body of the designated employer,
  - iii. is a vice president, chief administrative officer, chief operating officer, chief financial officer or chief information officer of the designated employer or holds any other executive position or office with the designated employer, regardless of the title of the position or office,
  - iv. is the director of education, or a superintendent, of a designated employer that is a school board, or
  - v. is the provost or dean of a designated employer that is a university, college of applied arts and technology or post-secondary institution.
2. Under his or her compensation plan, the employee or office holder is entitled to receive or could potentially receive annual cash compensation of \$100,000 or more in 2012, 2013 or 2014. For the purpose of this paragraph, if the employee or office holder works only a portion of a year, his or her cash compensation for the whole year shall be calculated as if he or she were entitled to receive or could potentially receive cash compensation for the remainder of the year at the same rate or level.

Same

- (2) This Part applies to such other employees and office holders of a designated employer as may be prescribed.

**Exception re collective bargaining**

(3) Despite subsections (1) and (2), this Part does not apply to an employee who is represented by any of the following organizations which represent two or more employees for the purpose of collectively bargaining, with their employer, terms and conditions of employment relating to compensation:

1. An organization that engages in collective bargaining under the Labour Relations Act, 1995, the Education Act or the Colleges Collective Bargaining Act, 2008.
2. An organization that, before the employer's effective date, collectively bargained, with the employer, terms and conditions of employment relating to compensation that were implemented before the employer's effective date.
3. An organization that, before the employer's effective date, has an established framework for collectively bargaining, with the employer, terms and conditions of employment relating to compensation.
4. Another prescribed organization.

## **Restraint Measures**

### **Effective date of restraint measures**

7.4 (1) The effective date of the restraint measures for designated employers, designated executives and designated office holders is March 31, 2012, except as otherwise provided in this section.

Effective date for certain employers, etc.

(2) If this Part applies to an employer by virtue of a regulation mentioned in paragraph 8 of section 7.2, the effective date of the restraint measures for the employer, its designated executives and its designated office holders is the date specified by the regulation, subject to subsections (4) and (5).

Same

(3) If this Part becomes applicable to an employer after March 31, 2012 by virtue of paragraph 1, 2, 3, 4 or 7 of section 7.2, the effective date of the restraint measures for the employer, its designated executives and its designated office holders is the date on which this Part becomes applicable to the employer, subject to subsections (4) and (5).

### **Effective date for certain executives and office holders, etc.**

(4) If this Part applies to an employee or office holder by virtue of a regulation mentioned in subsection 7.3 (2), the effective date of the restraint measures for the employee or office holder is the date specified by the regulation.

Same

(5) If this Part becomes applicable to an employee or office holder after March 31, 2012 because the earliest date on which the employee or office holder first meets both the condition in paragraph 1 and the condition in paragraph 2 of subsection 7.3 (1) is after March 31, 2012, the effective date of the restraint measures for the employee or office holder is the date on which this Part becomes applicable to him or her.

### **Expiry of certain restraint measures**

7.5 (1) The restraint measures in sections 7.6 to 7.13 expire on a day to be named by proclamation of the Lieutenant Governor.

Proclamation

(2) The Lieutenant Governor may by proclamation name the date on which the restraint measures in sections 7.6 to 7.13 expire.

### **Expiry date**

(3) The date named in the proclamation must be on or after the day Public Accounts for a fiscal year are laid before the Assembly indicating that the Province did not have a deficit for that fiscal year.

### **Interpretation, deficit**

(4) For the purposes of subsection (3), the Province is considered not to have a deficit for a fiscal year if the expenditures of the Province for the fiscal year do not exceed the revenues for the fiscal year.

### **No increases under compensation plan**

7.6 No designated employer shall, before the end of the restraint period, amend the compensation plan that is in effect on the employer's effective date for the position of a designated executive or the office of a designated office holder, in any manner that would increase the salary, the salary range, or any benefit, perquisite or non-discretionary or discretionary payment that is required to be, or that may be, provided to a holder of that position or office under the compensation plan.

### **No increase in salary**

7.7 The salary of a designated executive or designated office holder under the compensation plan that is in effect for the position or office on his or her effective date cannot be increased before the end of the restraint period.

### **No increase in benefits, perquisites and payments, etc.**

7.8 (1) Subject to subsection (3), a benefit, perquisite or payment provided to a designated executive or designated office holder under the compensation plan that is in effect for the position or office on his or her effective date cannot be increased before the end of the restraint period, and no new or additional benefits, perquisites or payments may be provided to a designated executive or designated office holder before the end of the restraint period.

**Payment**

(2) In this section, “payment” means cash compensation other than salary.

**Exception, payments**

(3) An increase in a payment, or a new or additional payment, may be provided to a designated executive or designated office holder before the end of the restraint period, if the increase or the new or additional payment,

(a) is in recognition of the designated executive’s or designated office holder’s,

(i) successful implementation of measures to reduce costs while protecting front-line service,

(ii) achievement of articulated government priorities, or

(iii) achievement of performance improvement targets set out in an annual quality improvement plan developed under the Excellent Care for All Act, 2010, if the designated employer is a public hospital; and

(b) is authorized under the compensation plan that is in effect for the position or office on his or her effective date.

**No increase in performance pay envelope**

7.9 (1) Every designated employer shall ensure that its performance pay envelope for any performance cycle that falls in whole or in part within the restraint period does not exceed its performance pay envelope for the last performance cycle, ending before the employer’s effective date, in respect of which the employer paid performance pay.

**Definitions**

(2) In this section,

“employee”, in relation to a designated employer, means, despite section 7.3, any employee of the employer, whether or not he or she is a designated executive, but does not include an employee described in subsection 7.3 (3);

(“employé”)

“office holder”, in relation to a designated employer, means, despite section 7.3, any office holder of the employer, whether or not he or she is a designated office holder; (“titulaire de charge”)

“performance cycle”, in relation to a designated employer, means a period in respect of which the employer determines the performance pay to be paid to its employees and office holders; (“cycle de rendement”)

“performance pay envelope”, in relation to a designated employer, means the aggregate amount of all performance pay paid by the employer to its employees and office holders in respect of a specific performance cycle. (“enveloppe des primes de rendement”)

**No increase upon renewal, etc.****Designated executives**

7.10 (1) The renewal of a designated executive’s contract cannot, before the end of the restraint period, provide for compensation greater than that provided under the compensation plan that is in effect for the position on his or her effective date.

**Designated office holders**

(2) The renewal of a designated office holder’s appointment cannot, before the end of the restraint period, provide for compensation greater than that provided under the compensation plan that is in effect for the office on his or her effective date.

**Interpretation**

(3) If the designated executive has a new employment contract but remains in the same position, or if the designated office holder has a new appointment but remains in the same office, the new contract or appointment is deemed to be a renewal for the purposes of this section.

**New designated executives and office holders****New designated executives**

7.11 (1) If a person becomes a designated executive on or after March 31, 2012 and before the end of the restraint period, his or her compensation plan must not provide for compensation greater than that provided under the compensation plan that is in effect on his or her effective date for other employees in the same or a similar position with the same designated employer.

**New designated office holders**

(2) If a person becomes a designated office holder on or after March 31, 2012 and before the end of the restraint period, his or her compensation plan must not provide for compensation greater than that provided under the compensation plan that is in effect on his or her effective date for other holders of the same or a similar office with the same designated employer.

**Change of position or office**

7.12 If, before the end of the restraint period, a designated executive or designated office holder accepts a new position or office with a designated employer but continues to be a designated executive or designated office holder, his or her new compensation plan must not provide for compensation greater than that provided under the compensation plan that, on the date he or she accepts the new position or office, is in effect for other employees or office holders in the same or a similar position or office with the same designated employer.

**Bona fide restructuring, etc.**

7.13 A designated employer shall not, before the end of the restraint period, alter the title of a position or office or carry out any other restructuring that would result in a restraint measure not applying to one or more employees or office holders to whom the restraint measure would otherwise have applied, unless the title alteration or other restructuring is carried out solely for a bona fide purpose other than to prevent the restraint measure from applying to one or more employees or office holders.

**Effect of amendment of benefit plan, etc.**

7.14 If, on his or her effective date, a designated executive or designated office holder participates in a group sickness or accident insurance plan, a private health services plan, or a group term life insurance policy, that is applicable to all or most of the employees of the designated employer, any amendment applicable to all or most of the employees of the designated employer that is made to the plan or policy after that effective date does not constitute an increase in a benefit or a new or additional benefit for the purposes of this Part.

**Effect of cost increases**

7.15 If a designated employer's cost of providing a benefit, perquisite or payment under a compensation plan as it existed on the employer's effective date increases after that effective date, the increase in the designated employer's cost does not constitute an increase in the benefit, perquisite or payment for the purposes of this Part.

**No future compensation re restraint measures**

7.16 A compensation plan cannot provide compensation to an employee or office holder after the end of the restraint period for compensation that he or she did not receive as a result of the restraint measures in this Part.

**Conflict with this Part**

7.17 (1) This Part prevails over any provision of a compensation plan and, if there is a conflict between this Part and a compensation plan, the compensation plan is inoperative to the extent of the conflict.

Same

(2) This Part prevails over any other Part of this Act, over any other Act and over any regulation, by-law or other statutory instrument.

Exception

(3) Nothing in this Part shall be interpreted or applied so as to reduce any right or entitlement under the Human Rights Code or the Pay Equity Act.

Same

(4) Nothing in this Part shall be interpreted or applied so as to reduce any right or entitlement provided under section 42 (Equal pay for equal work) or 44 (Differentiation prohibited) of the Employment Standards Act, 2000.

Same

(5) If the insurance plan under the Workplace Safety and Insurance Act, 1997 did not apply to an individual on his or her effective date, nothing in this Part shall be interpreted or applied so as to prevent the insurance plan from applying to the individual after that effective date.

## **Compliance Reports**

### **Compliance reports**

7.18 (1) Every designated employer shall prepare reports signed by the employer's highest ranking officer, certifying whether the employer has complied with the restraint measures throughout the reporting period.

### **Directives re compliance reports**

(2) The Minister responsible for this Part may issue directives to designated employers respecting the reports.

#### **Examples**

(3) Without limiting the generality of subsection (2), the directives may specify the information that must be included in the reports, the persons to whom the reports must be submitted and the form, manner, timing and other requirements related to submitting the reports.

## **Compensation Studies**

### **Directives re compensation studies**

7.19 (1) The Management Board of Cabinet may issue directives to designated employers requiring them to conduct compensation studies for the purpose of determining the appropriate compensation for the positions and offices held by designated executives and designated office holders.

#### **Examples**

(2) Without limiting the generality of subsection (1), the directives may,

(a) specify the types of compensation that must be dealt with in the compensation studies, the information that must be included in the compensation studies, the factors that must be taken into account in conducting the compensation studies, and the frequency with which the compensation studies must be conducted;

(b) require designated employers to prepare reports of the results of the compensation studies they conduct and specify the information that must be included in the reports, the persons to whom the reports must be submitted and the form, manner, timing and other requirements related to submitting the reports;

(c) require designated employers to post the reports mentioned in clause (b) and specify the manner, timing and other requirements related to posting the reports.

#### **Compliance**

(3) Every designated employer to which a directive applies shall comply with the directive.

## **Regulations**

### **Regulations**

7.20 (1) The Lieutenant Governor in Council may make regulations in respect of any matter that, in this Part, is permitted or required to be prescribed, provided or specified by regulation.

#### **Retroactivity**

(2) A regulation mentioned in paragraph 8 of section 7.2 may be made retroactive to a date no earlier than March 31, 2012.

2. Subsection 23 (1) of the Act is amended by striking out "or" at the end of clause (c), by adding "or" at the end of clause (d) and by adding the following clause:

(e) the inoperability of a compensation plan by reason of subsection 7.17 (1).

#### **Commencement**

3. This Schedule is deemed to have come into force on March 31, 2012.