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CONSULTATIONS ON PUBLIC SECTOR COMPENSATION BEGIN

On July 20, 2010, the Ontario government initiated a consultation process designed to address upcoming compensation negotiations for “bargaining” employees not caught by the *Compensation Restraint Act*. In this *FTR Now*, we discuss the potential implications of this process for public sector employers.

BACKGROUND

In March, as part of its 2010 Budget, the government introduced the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* (the “*Compensation Restraint Act*”) which froze the wages (with some specific exceptions) for non-bargaining employees at the rate they were at on March 24, 2010. This two-year wage freeze applies to non-bargaining employees in the Ontario Public Service, hospitals, boards of health, schools, colleges, universities, Hydro One, Ontario Power Generation, and many other provincial agencies, boards and commissions.

With regard to bargaining employees, the government indicated its intention to honour all existing collective agreements in the public sector when the *Compensation Restraint Act* was introduced in March. However, as collective agreements were to be renegotiated, the government indicated that it intended to work with the transfer payment partners and bargaining agents to seek collective agreements of at least two years’ duration that included no net increases in compensation. What was unclear, up to this point, was how the government intended to work with the transfer payment partners and bargaining agents to achieve its financial goals. How the government intends to move forward is now becoming more clear.

THE GOVERNMENT'S CONSULTATION INITIATIVE

On July 20, 2010, the government gathered together a group of public sector labour leaders and employers to announce its intention to launch a series of "consultations" aimed at implementing its "zero-zero" two-year public sector wage freeze. In his remarks to the group, Finance Minister Duncan stated, once again, that "[a]s agreements are negotiated, we will work with you – our partners – to seek agreements of at least two years' duration that provide no net increase in compensation...It doesn't matter whether contracts expire next month, next year or the year after that – all employers and employee groups need to do their part".

As a result of briefings with various stakeholder groups and a number of Hicks Morley lawyers, details of how the consultation will be conducted are beginning to emerge. Currently, the government plans three phases of consultations involving different unions and the applicable employer groups that have collective bargaining relationships with those unions. The consultations will be held in Toronto over the following dates:

Phase 1 – August 9th to 20th

- OPSEU across Sectors;
- CAW across Sectors;
- SEIU across Sectors;
- the University Sector – Faculty Association; and
- the Ontario Public Service.

Phase 2 – August 30th to September 10th

- ONA across the Health Sector;
- OMA, Interns & Residents;
- CUPE across Sectors;
- Canadian Office Professional Employees (Community Services & Health);
- Christian Labour Association (Long-Term Care, Hospital Support);
- United Steel Workers (Long Term Care, Community Services, Health);
- Labourers (Long Term Care, Health); and
- Food & Commercial Workers (Long Term Care, Community Services, Health).

Phase 3 – September 20th to October 1st

- Education (Primary/Secondary – all bargaining units);
- University Sector – all other non-faculty bargaining units;

- PWU and SEP in the Energy Sector; and
- ATU in GO Transit.

The overriding goal for each table will be to negotiate a framework agreement that can be implemented locally. The specifics of how each of these various tables will operate to achieve this goal remains to be seen. For example, OPSEU in Phase 1 represents employee groups in Hospitals, Community Colleges, Long Term Care facilities, Social Service Agencies, and others. As a result, the OPSEU employer table will have many diverse interests and will likely have to sub-divide by industry.

The government will act as a facilitator in these negotiations and will be a party to the consultations. It is expected that they will canvas what the government can do to address structural issues in that particular sector that might be a barrier to the parties otherwise negotiating framework agreements. The obvious underlying goal will be to negotiate agreements that enable the government to meet its fiscal goals.

When a framework agreement is reached, the individual employer and union representatives would still have to agree with and ratify the agreement. At the same time, the government will move forward to address any legislative or fiscal commitments made by it.

PAUSING EXISTING BARGAINING PROCESSES

The government has also asked that all collective agreement negotiations and interest arbitrations be “paused”. In this regard, it has drafted letters which it hopes the employer community will send to the various unions and interest arbitration boards. Whether particular unions will agree to pause ongoing bargaining and interest arbitrations remains to be seen. There is no legislative prescription which allows employers and unions to not comply with their duty to bargain. Accordingly, absent mutual consent to pause existing bargaining processes, employers will face challenges in addressing local bargaining needs versus their desire to work constructively with the government.

WHAT SHOULD EMPLOYERS BE DOING?

- Get informed and determine what participation your sector has in the consultation.
- Speak with your applicable sector association and determine what role they intend to play.

- Determine what interests might be in play in the consultations that affect your operations and those of your sector.
- Determine if the consultation process provides an opportunity for your sector to address structural issues with the government.
- At a local level, determine what a pause in bargaining or in an applicable interest arbitration process will have on your labour relations.

If you need any assistance or information regarding the consultation process please feel free to contact the following lawyers or your regular Hicks Morley lawyer:

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