



2019
BULLETIN
Supplement to the
Manual for Effective
College Governance

ABOUT THIS BULLETIN

This bulletin is a companion document to the *Manual for Effective College Governance*, (August 2018) providing supplementary comments and updates to the content.

UPDATES

Chapter 1 – Transition to Ontario Not-for-Profit Corporations Act, 2010 (“ONCA”)

The relevant Ontario government website indicates that early 2020 continues to be targeted for the proclamation of the ONCA. There were some changes to the *Corporations Act* (Ontario) in November 2017 and January 2018 that implemented some provisions of the ONCA. There were no further updates as of July 22, 2019.

Appendix A, Section A.1 – Broader Public Sector Executive Compensation Act, 2014 (“BPSECA”)

The government committed to reviewing Regulation 406/18 to BPSECA by June 7, 2019. The review will evaluate the effectiveness of Regulation 406/18 in furthering the purpose of the BPSECA. No information has been released about the status of the review as of the date of this Bulletin.

On May 29, 2019, the Ontario government passed *Bill 100, the Protecting What Matters Most Act (Budget Measures), 2019*. Bill 100 included some amendments to the BPSECA, and further, more substantive changes to broader public sector executive compensation are expected by way of regulation. The amendments in Bill 100 are:

- Future regulations under BPSECA may authorize the Management Board of Cabinet to “establish rules governing a designated employer’s use of performance assessment indicators in determining a designated executive’s compensation”. This means that the government may dictate the priorities and metrics for which achievement-based pay may be provided.
- Future regulations may also authorize the Management Board of Cabinet to limit salary and performance-based pay increases, including by limiting the number of designated executives who may receive increases, and the time period for which a designated employer may provide increases. While the budget document referred to “ending automatic pay increases,” this proposal suggests that salary increases will still be available, but in a more limited form.
- Newly-created designated employers may not hire permanent executives without government approval (or written exemption) of the executive’s compensation plan.
- The government may exempt employers from requirements set out in the compensation framework found in Regulation 406/18.
- The transition provisions in section 9 of BPSECA are clarified to confirm that existing executives may only be grandfathered until August 13, 2021, i.e. three years following the introduction of Regulation 406/18. The President of the Treasury Board, however, may bring that date forward to an earlier date, or exempt an employer until a specified date. The anti-avoidance provision found in section 9 has been removed.

Colleges should consult the *Broader Public Sector Accountability Act*, *BPSECA*, Regulation 406/18 and any new regulations when hiring designated executives or office holders, or when moving them into different roles, and when undergoing restructuring, to ensure they are not offside the legislative restraints.

Appendix A, Section A.1 – Bill 124 (“Protecting a Sustainable Public Sector for Future Generations Act, 2019”)

Bill 124, the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, was introduced for First Reading on June 5, 2019. If passed, Bill 124 would cap public sector wage increases to one percent annually for a three year “moderation period”. Bill 124 applies to union and non-union employees at colleges, among other public sector employers. Bill 124 does not apply to any college employee who is a designated executive under the BPSECA. Below are the highlights of Bill 124:

- The moderation measures limit salary and compensation increases to 1 per cent per year over a three-year “moderation period”.
 - For unionized employees, the three-year moderation period begins at the expiry of the collective agreement that is in force as of June 5, 2019. If no collective agreement is in force or parties are bargaining for first collective agreement, the three-year moderation period begins when the new collective agreement comes into force.
 - For non-union employees, the three-year moderation period begins on the earlier of: (i) a date to be selected by the employer that is after June 5, 2019; or (ii) January 1, 2022. If any non-union compensation plan is tied to increases to the salary rate of unionized employees, the moderation periods for non-union employees must line up with the unionized employees’ moderation period.
- Salary increases under a collective agreement or compensation plan that are based on: (i) the employee’s length of time in employment; (ii) assessment of performance; or (iii) completion of a course of study are excepted. During the moderation period, total salary increases are limited to one percent on average.
- Bill 124 has no express penalties for non-compliance.

Appendix A, Section A.6 – Making Ontario Open for Business Act, 2018

The previous Government of Ontario passed the *Fair Workplaces, Better Jobs Act, 2017* (“Bill 148”) on November 22, 2017, and its amendments began to come into force as early as December 3, 2017. Bill 148 introduced significant amendments to the minimum employment standards contained in Ontario’s *Employment Standards Act, 2000* (“ESA”), although there were also changes to the *Labour Relations Act, 1995* and the *Occupational Health and Safety Act*.

On November 21, 2018, the new Ontario government passed Bill 47 (the *Making Ontario Open for Business Act, 2018*). It repealed many of the changes implemented by Bill 148. As a result of Bill 47, the following are the amendments from Bill 148 that remain in effect:

- As of December 3, 2017
 - **Parental leave** entitlements are extended from 35 weeks to 61 weeks for employees who take pregnancy leave, and from 37 weeks to 63 weeks otherwise (Note: These changes coincide with federal amendments to the Employment Insurance Act).
 - **Critical Illness** Leave of up to 17 weeks to care for adult family members.
- As of January 1, 2018
 - General minimum wage increased to \$14 per hour, with the next increase on October 1, 2020 to be based on inflation.
 - Paid vacation entitlement increased to 3 weeks and 6% of wages for workers with at least five years’ length of service.
 - “True Interns” are no longer exempt from the ESA.
 - Crown employees are no longer exempted from most provisions of the ESA.

- Family Medical Leave extended to 28 weeks in a 52-week period.
- Domestic and Sexual Violence Leave was introduced, and includes 5 paid days' leave.
- Retention periods for vacation-related documents were increased to 5 years.
- Related employer criteria no longer includes reference to the intent or effect of an employer's business arrangements.

As of January 1, 2019, Personal Emergency Leave (formerly 2 paid days and 8 unpaid days per calendar year) was revoked entirely. It has been replaced by three different types of unpaid leaves, which collectively provide eight unpaid days per calendar year. They are set out below:

- **Sick Leave** – up to three days per calendar year for personal illness, injury or medical emergency.
- **Bereavement Leave** – up to two days per calendar year in the event of the death of certain relatives.
- **Family Responsibility Leave** – up to three days per calendar year because of an illness, injury, medical emergency or urgent matter relating to certain relatives.

Appendix A, Section A.7 – Smoke-Free Ontario Act, 2017

The Ontario government proclaimed the *Smoke-Free Ontario Act, 2017* and the *Cannabis Control Act, 2017* in tandem with the federal government's legalization of recreational cannabis effective as of October 17, 2018.

The *Smoke-Free Ontario Act, 2017* sets out the rules for the sale and promotion of tobacco and related products, as well as the prohibitions on smoking or vaping tobacco and cannabis (medical or recreational). In Ontario, adults age 19 and over are permitted to smoke cannabis wherever smoking of tobacco is permitted, subject to municipal by-laws and property owner rules.

Colleges have an obligation under the current *Smoke-Free Ontario Act* both as a college and as an employer to ensure compliance with the prohibitions against smoking or holding lighted tobacco, medical cannabis or using electronic cigarettes in any "prohibited place" over which it has control (e.g. indoor common area in a college residence). The *Smoke-Free Ontario Act* also has a regulation that sets out detailed rules for prohibitions in certain locations (e.g. sporting areas, playgrounds) and rules relating to signage and exemptions. Accordingly, Colleges should consult the *Smoke-Free Ontario Act* and its regulation to determine its obligations under the legislation.

The *Cannabis Control Act, 2017* establishes the rules relating to the sale, distribution, purchase and possession of cannabis, including the minimum age of purchase (19 years).

Medical cannabis users continue to be authorized under federal legislation, specifically Part 14 of the *Cannabis Regulations* under the *Cannabis Act (Canada)*. Questions about accommodating medical cannabis use on campus should be reviewed in context with this legislation, along with the *Human Rights Code of Ontario*.

Addenda – Pay Transparency Act, 2018

On April 26, 2018, the previous Ontario government passed the *Pay Transparency Act, 2018* (the "PTA"). It was expected to come into force on January 1, 2019. However, before the legislation came into effect, the current Ontario government delayed the implementation to a date to be named by proclamation of the Lieutenant Governor (i.e., indefinitely).

The PTA is the first of its kind among the Canadian provinces, and creates a number of requirements for compensation disclosure to employees and potential employees, as well as the obligation to file annual pay transparency reports with the government. Below is a list of the highlights from the PTA:

- Employers would be prohibited from seeking the compensation history of an applicant for a position, whether done by inquiring with the applicant personally or through an agent.
- Voluntary disclosure about compensation history by the applicant is not prohibited, and where disclosed, the employer may rely on such information in determining the compensation for the applicant.
- “Compensation” is defined as all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount.
- Employers would be allowed to seek out information regarding the ranges of compensation or aggregate compensation provided for positions comparable to the position for which the applicant is applying.
- Job postings will be required to include information about expected compensation or the range of expected compensation for the position.
- Employers will have to prepare pay transparency reports relating to the composition of the workforce and the differences in compensation with respect to gender and other characteristics. These reports are submitted to the government, and would be published.
- Employers will be prohibited under the PTA from intimidating, dismissing, or otherwise penalizing an employee or threatening to do so because the employee has:
 - a. made inquiries to the employer about the employee’s compensation;
 - b. disclosed the employee’s compensation to another employee;
 - c. made inquiries about a pay transparency report, or about information contained in such a report;
 - d. given information about the employer’s compliance or non-compliance with the requirements of the PTA or the regulations to the Ministry; or
 - e. asked the employer to comply with the PTA or the regulations.
- Complaints of alleged contraventions of the PTA would be made to the Ontario Labour Relations Board or by arbitration in unionized workplaces.
- Employers could be subject to compliance audits and investigations. Penalties are expected to be set out in future regulations.

Tuition and Ancillary Fees Minister’s Binding Policy Directive and Tuition and Ancillary Fees Reporting Operating Procedure (collectively, the “Tuition Directive”)

The Ontario government implemented significant changes to the Tuition Directive mandating the public colleges to do the following:

- Colleges must reduce tuition fees by 10% for the 2019/2020 academic year and freeze tuition fees at this level for the subsequent 2020/2021 academic year.
- The Tuition Directive re-classifies ancillary fees into essential (or compulsory) and non-essential (non-compulsory) ancillary fees. Colleges must ensure that students are able to opt out of non-compulsory ancillary fees at the time of billing.

The Tuition Directive will become effective on September 1, 2019 and can be found at <http://www.tcu.gov.on.ca/pepg/audiences/colleges/>.

Strategic Mandate Agreements (SMA3) and Performance/Outcomes-Based Funding 2020-2025

The government announced in spring 2019 that, in the next round of strategic mandate agreements (2020-25) the government will link a portion of funding to metric performance. In 2020 this portion will be at a system-average of 25% and will grow to a total of 60% of Ministry of Training, Colleges and Universities operating grant funding by 2024-25.

Open for Business: Modernizing Ontario's Apprenticeship System Act, October 2018 and Modernizing the Skilled Trades and Apprenticeship Act, 2019

New legislation, *Open for Business: Modernizing Ontario's Apprenticeship System Act, October 2018* and *Modernizing the Skilled Trades and Apprenticeship Act, 2019* has been introduced which supports transformation of apprenticeship over the next several years. The Ontario College of Trades is to be wound down, and its functions returned to the Ministry of Training, Colleges and Universities (MTCU). Also, 'compulsory trades' will be replaced by new 'certificates of restricted practice', and the province plans to introduce shorter-term 'portable skill sets' to help speed up training and certification in the skilled trades. As well, Ontario Budget 2019 eliminated the provincial "Graduated Apprenticeship Grant for Employers". MTCU is "currently reviewing funding for apprentices and employer sponsors".

The government's goal is to make changes to apprenticeship to:

- Quickly address an impending shortage in tradespersons;
- Better meet the needs of the 80 per cent of employers (often small business owners) who do not currently train apprentices;
- Make it easier for small-scale construction employers to hire apprentices (e.g. due to reduced journeyman-to-apprenticeship ratios);
- Provide much shorter pathways so that more apprentices complete their programs, and are certified for at least for a limited set of activities needed by employers; and
- Enable a more flexible, efficient and competitive workplace.

While colleges have limited capacity to undertake apprenticeship modernization themselves, they are undertaking several initiatives to strengthen their relationships with employers, apprentices and graduates of the three in-school levels.

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Manual for Effective College Governance

Included in the manual:

- Key elements of good governance in the college sector.
- Roles and responsibilities of a college board and its members.
- Downloadable and customizable templates and tools to support boards in their implementation of good governance practices.
- and much more!

For more information, please contact your college's Board Executive Assistant.





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