



UPDATE ON PUBLIC SECTOR WAGE FREEZE LEGISLATION

May 19, 2010

On May 18th, 2010, the *Public Sector Compensation Restraint to Protect Public Services Act, 2010*, which is Schedule 25 to Bill 16, *Creating the Foundation for Jobs and Growth Act, 2010* (formerly "Bill 16", now the "Restraint Act"), received Royal Assent.

The Restraint Act is now law in Ontario.

The basic thrust of the Restraint Act is to freeze the salaries of non-bargaining unit employees of certain public sector employers from March 24, 2010 to April 1, 2012.

No material changes were made to the Restraint Act since it was first introduced on March 25, 2010. Our memo of March 31, 2010 remains a useful reference and overview of this important piece of legislation. A link to our March 31st memo is set out below:

<http://ddohealthlaw.com/documents/Public%20Sector%20Restraint%20Newsletter.pdf>

What has changed since the Restraint Act was first introduced are the number and diversity of issues and unresolved questions that have come to light. We have already assisted a number of health care sector employers to navigate their specific fact situations through the ambiguous and vague provisions of the Restraint Act.

These issues include:

1. Can an employer proceed with a salary increase for a non-bargaining unit employee that was agreed upon prior to March 24, 2010 but not implemented?
2. Does it make a difference if the proposed salary increase relates to a period prior to March 24, 2010 (i.e., the fiscal year 2009/2010) for those employers that have a practice of making salary adjustments in arrears?
3. Can employers provide non-bargaining unit employees with a bonus or other benefits post March 24, 2010 if:

- a. there was no written compensation plan in existence that authorized the provision of bonuses or other benefits?
 - b. there was no past practice of providing such bonuses or benefits?
 - c. the past practice existed but it was infrequent or sporadic?
4. Although bargaining unit employees are not covered by the Restraint Act, what are the implications of approving a collective agreement with a net wage increase after March 24, 2010 for:
- a. government funding between March 24, 2010 and April 1, 2012?
 - b. relations between bargaining unit employees and their non-bargaining unit co-workers?
 - c. increasing the likelihood of certification of the non-bargaining unit employees?

Dykeman Dewhirst O'Brien LLP has assisted our clients with these and other issues. We would be pleased to assist your organization in determining the legal and strategic options for your non-bargaining unit employee compensation plans during the next two years.

For more information, please contact any one of the lawyers listed below:

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