Ontario Bill 124 (2019)
Protecting a Sustainable Public Sector for Future Generations Act, 2019
Activity to date:

- June:
  - Bill passed first reading on June 5th, then LA session recessed until late October.
  - Initiated the Bill124 Ad-hoc Committee to consider actions
- July:
  - Read, re-read, and re-read the Bill
  - Met with members of FAUW to learn and share concerns
- August:
  - President and Director Serviss met with NDP-MPP (Waterloo) Catherine Fife
    - Expressed concerns, and found her to be very supportive and interested
  - President met with PC-MPP (Kitchener-Conestoga) Mike Harris
    - Expressed concerns and not the response I expected, although did make time to meet
    - Asked for list of questions to be submitted to his office.
  - Reviewed comments, concerns, and legal opinions of other employee groups.
    - (specifically Goldblatt Partner, LLP that other employee groups have referred to)
Breakdown of the Bill 124:

• **Not in effect** – needs to pass 2\textsuperscript{nd} and 3\textsuperscript{rd} reading and royal assent
  • The comments following are in reference to the version of Bill 124 brought before the Legislative Assembly on June 5\textsuperscript{th} – passed 1\textsuperscript{st} reading.

• **IF PASSED....**
  • Imposes a series of 3-year “moderation periods” where salary and compensation caps would be made to unionized and non-unionized workplaces.
  • Increases to BOTH salary rates and existing or new compensation requirement (including the salary rates) would be capped at 1% per year. As described in following sections of the Act.
  • DOES NOT affect collective agreements or arbitration awards that are in effect prior to June 5\textsuperscript{th}
  • Prohibits any salary or compensation increases before or after the moderation period, designed to make up for the restraints imposed by the ACT
Breakdown of the Bill 124:

• The extent to which Bill 124 can be seen to interfere with rights that are found to be constitutionally protected under section 2(d) of the Canadian Charter of Rights and Freedoms;
  • Anticipated that challenges will be brought to the constitutionality of Bill 124 If/When it is enacted.
Breakdown of the Bill 124:

There are 37 sections, not all will apply to UW employees, but it is a matter of interpretation. At this time this is not clear.

Section 1:

**Purpose:**

- The purpose of this Act is to ensure that increases in public sector compensation reflect the fiscal situation of the Province, are consistent with the principles of responsible fiscal management and protect the sustainability of public services.
Breakdown of the Bill 124:

Section 2:
Interpretation:

“collective agreement” includes,

a) A collective agreement within the meaning of the Labour Relations Act, 1995
b) any agreement, whether negotiated or the result of an arbitration award, between an employer or an employer’s organization and a bargaining organization to which this Act applies, in respect of compensation for employees;

“compensation” means anything paid or provided, directly or indirectly, to or for the benefit of an employee, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments.

“non-represented employee” means an employee to whom this Act applies who is not represented by a bargaining organization or is excluded from being represented by a bargaining organization to which this Act applies

“Salary rate” mean a base rate of pay, whether expressed as a single rate of pay, including a rate of pay expressed on an hourly, weekly, bi-weekly, monthly, annual or some other periodic basis, or a range of rates of pay, or, if no such rate or range exists, any fixed or ascertainable amount of base pay.
Breakdown of the Bill 124:

Section 3:
Right to bargain collectively is continued, subject to other provisions of the Act

Section 4:
Right to strike or lock-out – nothing in the Act affects this.
Breakdown of the Bill 124:

Section 5: Application to Employers
5(1) –defines to which employers the Act applies. There are 9 divisions and division 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.

Exceptions:
5 (2)
ss. 1,2,3, - Municipalities (Municipalities Act 2001) and associated boards etc.
4. Unless otherwise specifically provided for in the regulations, an organization that undertakes its activities for the purpose of profit to its shareholders.
Breakdown of the Bill 124:

Section 6(1) Applies to employees of employers in s. 5(1)

Exception: 6(2) The Act does not apply to such employees or classes of employees as may be specified by a Minister’s regulation.

Same, designated executives

6(3) The Act does not apply to designated executives within the meaning of the “Broader Public Sector Executive Compensation Act, 2014” (There is very similar language in both these acts.)
Breakdown of the Bill 124:

Section 7: Act does not apply to judges, justices of the peace and masters

Section 8: Bargaining Organizations are defined in 8 categories. “...collectively bargaining terms and conditions of employment relating to compensation”

Section 9: Moderation period for represented employees, outlines rules depending on when a collective agreement expires, is in force, or is in negotiations.
Breakdown of the Bill 124:

Section 10(1) Maximum increases in salary rates
Not greater than 1% per 12-month period of the moderation period, but can be lower.

Section 10(2) Exceptions to 10(1) if the increase is authorized under a collective agreement:
1. The employee’s length of time in employment
2. An assessment of performance
3. The employee’s successful completion of a program or course of professional or technical education.
Breakdown of the Bill 124:

Section 11 Maximum increases in compensation

11(1) During the moderation period no collective agreement or arbitration award may provide for any incremental increases to existing compensation entitlements or for new compensation entitlement that in total equal more than 1% on average for all employees covered by the collective agreement for each 12-month period of the moderation period.

11(2) For greater certainty, an increase in a salary rate under 10(1) is an increase to compensation entitlements for the purposes of 11(1)
Breakdown of the Bill 124:

Section 11 Maximum increases in compensation

11(1) During the moderation period no collective agreement or arbitration award may provide for any incremental increases to existing compensation entitlements or for new compensation entitlement that in total equal more than **1% on average for all employees** covered by the collective agreement for each 12-month period of the moderation period.

11(2) For greater certainty, an increase in a salary rate under 10(1) is an **increase** to compensation entitlements for the purposes of 11(1)

11(3) Cost of providing a benefit as it existed on the day before the beginning of the moderation period the increase is not factored into the total compensation increase.
Breakdown of the Bill 124:

Section 12: Expired collective agreements, restriction on increases in salary rates.

– salary rate applicable to a position or class of positions cannot be increased during the moderation period while no agreement is in force.

12(2) Same exceptions as 10(2) exist.
Breakdown of the Bill 124:

Section 13: Conflict with Act

*This Act prevails over any collective agreement or arbitration award and, if the Minister makes an order under subsection 20(1) declaring that a collective agreement or arbitration award is inconsistent with this Act, the collective agreement or arbitration award is void and deemed never to have had effect.*
Breakdown of the Bill 124:

Non-Represented Employees
Section 14(1) Section 15 – 17, the moderation period is the three-year period that begins on the earlier of:
   a.) a date to be selected by the employer that is after June 5th
   b.) January 1, 2022.

14(2) Exception: Despite 14(1) if a compensation plan provides that a non-represented employee’s salary rate shall increase in a corresponding manner with an increase to the salary rate of represented employees under a collective agreement, the moderation period for the non-represented employee is the moderation period that applies in respect of the collective agreement of the represented employees to which the non-represented employee’s compensation corresponds, as determined under section 9.
Breakdown of the Bill 124:

Non-Represented Employees

Section 15-17 are similar to Represented employees.

But 16(1) No incremental increases to the total compensation entitlements that in total equal more than 1% on average for non-represented employees employed by the employer per 12-month period.

16(2) An increase in salary rates under 15(1) is an increase to compensation entitlements for the purposes of 16(1)
Breakdown of the Bill 124:

Section 18: Anti Avoidance Measures places restriction on other compensation measures, before or after the applicable moderation period.

Oversight Measures:
Sections 19 – 21
Management Board of Cabinet may issue directives to employers to provide information relating to collective bargaining or compensation.

19(2) provides a list of types of information

19(3) Any disclosure of personal information made by the employer in compliance with a directive shall be deemed to be in compliance with clause 42(1) FIPPA and MFIPPA (which will be amended)

19(4) Confidentiality statement

19(5) a.) orders may be issued that authorize the disclosure of information to a minister of the Crown, a person employed in the office of the minister, a person employed under Part III of the Public Service of Ontario Act, 2006, a consultant or advisor retained to provide advice or services in relation to compensation matters, or such other person as the management Board of Cabinet considers appropriate...and

b.) authorize the purposes for which information described in 19(1) may be used.

19(6) Subsection (4) (5) prevail over FIPPA.
Breakdown of the Bill 124:

Section 20(1): The Minister may, in the Minister’s sole discretion, make an order declaring that a collective agreement or an arbitration award is inconsistent with the Act.

- Grants broad and sweeping powers to the Minister (who is currently Peter Bethlenfalvy, the President of the Treasury Board) to review agreements and arbitral awards to determine if they comply with the Act.
- Minister is empowered with “sole discretion” to make an order that a collective agreement or arbitral award is inconsistent with the Act.
  - Parties to the agreement must be given notice that the Minister may exercise this power and give 20 days to make submissions.
  - After the 20 days the Minister may make an order without any further notice to the parties.
- If the Minister makes an order declaring the agreement/award is not consistent with the Act, the agreement/award is rendered void, and is deemed to have never had any effect.
  - This could mean that the entire collective agreement could be void, not just the 1% caps to salary and compensation permitted by the Act.
  - In this case, parties are required to return to the same stage in bargaining as they were at immediately before they settled the terms of their agreement, and are required to bargain a new agreement that complies with the Act.
  - In this case, the terms and conditions of employment that existed immediately before the voided agreement came into force apply.
Breakdown of the Bill 124:

Section 21
The Minister may, by regulation, exempt a collective agreement from the application of the Act.

- **Power to exempt employees or collective agreements from the application of Bill 124.**
- Minister may decline to make an order that a collective agreement or award is inconsistent.
- Regulations may be enacted exempting any employee or class of employees from the application of the Act. s 6(2) or exempting any collective agreement from the application of the Act. s.21
- Parties who make submissions for exemption are not limited to arguing that their agreements comply with the Act’s caps. They may advocate for the Minister to issue regulations exempting their agreements.
- Regulations governing transitional matters, arising from the enactment of the Act would take precedence over the provisions of the Act.
Breakdown of the Bill 124:

General Section 22 - 31

Section 22

Nothing in this Act or in the regulation shall be interpreted or applied so as to reduce a right or entitlement under

a. Human Rights Code
b. Section 42 or 44 of the Employment Standards Act, 2000
c. Part IX of the Employment Standard Act 2000 or
d. The Pay Equity Act.
Breakdown of the Bill 124:

Section 23 limits the jurisdiction of the Ontario Labour Relations Board. 23(1) The Ontario Labour Relations board shall not inquire into or make a decision on whether a provision of this Act, a regulation or an order made under subsection 20(1) is constitutionally valid or is in conflict with the Human Rights Code.

“While this may be valid and enforceable in Ontario, these provisions do not prevent a party from challenging the constitutionality of Bill 124 before the Superior Court.”, Goldblatt Partners, LLP.
Breakdown of the Bill 124:

Section 24-30
Designed to prevent persons from seeking legal remedies for losses that result from the operation of the law.

- Compliance with the Act is not constructive dismissal
- Actions in compliance with the Act do not constitute expropriation or the tort of injurious affliction.
- No cause of action against the government or an employer for any acts done as a direct or indirect result of Bill 124 regulations, and no proceeding may be instituted or maintained based on any such actions.
- No person is entitled to any compensation for any loss or damages occasioned directly or indirectly as a result of Bill 124.
- Nothing in Bill 124 alters any existing employment relationship or creates an employment relationship between the Crown and affected employees.
- No complaint under the Employment Standards Act may be made or investigated in respect of any provision of Bill 124
Breakdown of the Bill 124:

Sections 31 Directives
Required to comply with directive issued – both the employer and employee.

Section 32 Regulations
Lieutenant Governor in council may make regulations for carrying out the purposes and provisions of the Act.

In the event of a conflict between the Act and a regulation made under the act (section 32(4) Transitional regulations), the regulations prevail.
Breakdown of the Bill 124:

Section 34-35 identify complementary amendments to the *Labour Relations Act, 1995* and the *Employment Standards Act, 2000* -very concerning language in these sections.

Section 36 – 37 identify the commencement of the act and the short title
Timeline:

• The government will return in October (late in the month).
• The government intends to apply the legislation retrospectively to June 5th, once it is passed and proclaimed in force.
• This leaves about 8 weeks for you to consider Bill 124 deeper and send me your feedback. uwsapres@uwaterloo.ca
• Moving forward, UWSA and FAUW are both discussing what the next steps could be.