



March 21, 2017

The Public Services Sustainability Act - Bill 28

I. General Summary

The stated general purpose of this Act, introduced in the Manitoba Legislature on March 20, 2017, is to:

- to create a framework of maximum future increases to compensation for public sector employees and fees for insured medical and health services that reflects the fiscal situation of the province, is consistent with the principles of responsible fiscal management, and protects the sustainability of public services (s. 2(a));
- to authorize a portion of cost savings identified through collective bargaining to fund increases in compensation or other employee benefits established by a collective agreement over and above the legislated framework (s. 2(b)); and
- to support meaningful collective bargaining within the context of fiscal sustainability (s. 2(c)).

The Act expressly states that the right to bargain collectively is continued, subject to the provisions of the Act (s. 3). Further, nothing in the Act affects the right to strike (s. 4).

Nothing in the Act affects an employee's entitlement to performance-based increases, step increases or increases as a result of promotion or reclassification within already established collective agreement pay ranges (s. 6).

II. Who is Affected by the Act?

The Act applies to all employees employed in or by (s. 7(1)):

- the government;
- a government agency (for example, Manitoba Hydro, Manitoba Housing, Legal Aid Manitoba);
- a health organization;

- an organization prescribed as a reporting organization under *The Financial Administration Act* (for example, regional health authorities, a variety of specified healthcare organizations including personal care homes, Insurance Council of Manitoba, Sport Manitoba Inc., and others);
- an authority as defined in *The Child and Family Services Authorities Act*;
- an agency as defined in *The Child and Family Services Act*;
- post-secondary education institutions;
- the office of the Auditor General, the office of the Chief Electoral Officer, the office of the Ombudsman, the office of the Children's Advocate, the office of the Conflict of Interest Commissioner or the office of the registrar appointed under *The Lobbyists Registration Act*;
- the Legislative Assembly;
- a school district or school division, as defined in *The Public Schools Act*; and
- any other employer that is designated by regulation, or that belongs to a class of employers designated by regulation.

III. Specific Aspects of the Act

A. Sustainability Period and Legislated Pay Increases

The Act establishes a floating four-year sustainability period for unionized employees, which begins or began, as the case may be (s. 9(1)):

- on the expiry of the existing term of a collective agreement or arbitral decision (including a decision of the Manitoba Labour Board) in place as of March 20, 2017; or
- if there was no collective agreement in place as of March 20, 2017, on the first day a new collective agreement is entered into.

For the purposes of calculating the expiry of an existing collective agreement, the sustainability period would begin on the last date of the collective agreement, irrespective of whether it continues past that date by virtue of section 63 of *The Labour Relations Act*.

The statutory compensation framework imposed during the applicable sustainability period includes (s. 12(1)):

- a two-year wage freeze;
- a maximum increase of 0.75% to the rate of pay in year three; and
- a maximum increase of 1.0% to the rate of pay in year four.

During the applicable sustainability period the rates of pay and additional remuneration must be based on twelve-month periods (s. 10). Further, the rates of pay may not be restructured during the applicable sustainability period (s. 11).

Under the Act, additional remuneration means an allowance, bonus, premium or benefit of any kind to be paid or provided to an employee. In other words, any monetary benefit (s. 2).

If a collective agreement that began in 2016 did not provide for a pay increase during the first twelve-month period of the agreement, the Lieutenant Governor in Council may, on the recommendation of the Treasury Board, exercise discretion to shorten the applicable sustainability period for the employees covered by that agreement to three years (s. 12(2)). As a result, the shortened statutory compensation framework will include (s. 12(3)):

- a wage freeze in 2017;
- a maximum increase of 0.75% to the rate of pay in 2018; and
- a maximum increase of 1.0% to the rate of pay in 2019.

In addition to rate of pay, no collective agreement or arbitral decision (including a decision of the Manitoba Labour Board) may provide for an increase to existing additional remuneration or for any new remuneration during the applicable sustainability period, unless (s. 13):

- the resulting increase in the cost of additional remuneration is not greater than the cost savings achieved by virtue of agreeing to or imposing rates of pay less than those permitted by the statutory compensation framework (i.e. less than 0.75% in year three and less than 1.0% in year four); and
- the increase or new additional remuneration is approved by the Treasury Board.

If a union and employer negotiate cost savings into their collective agreement during the applicable sustainability period, the Treasury Board may approve the use of a portion of those savings to fund an increase to the compensation payable to employees during years three and four of the applicable sustainability period (i.e. over and above the maximum increases in the statutory compensation framework) (s. 14(1)).

Any collective agreement or arbitral decision (including a decision of the Manitoba Labour Board) that provides for a restructuring of rates of pay, an increase in rates of pay, or an increase in

additional remuneration or new additional remuneration during the applicable sustainability period in contravention of the Act is null and void and the parties are deemed to have agreed to the maximum increases in the statutory compensation framework (s. 15).

B. Non-unionized Employees

The Act applies to non-unionized public sector employees in essentially the same terms as applicable to unionized public sector employees, with adjustments as necessary to conform to the individual employment relationship (s. 16 – 21).

C. Administration of the Act

The Treasury Board is given broad powers to ensure compliance with the Act, including issuing any directive to any employer that is not complying with the Act that it considers appropriate to ensure compliance (s. 22(3)).

D. Medical Fees

The Act imposes a four year sustainability period with the same percentage limits as applicable to pay increases for public sector employees on the fees receivable by physicians and other health care professionals who receive payments under *The Health Services Insurance Act* (ss. 23 – 26).

E. General

The Act does not prohibit any amendments to any provisions in collective agreements or arbitral decisions (including decisions of the Manitoba Labour Board), other than a provision relating to its term, provided the amendment does not contravene the Act (s. 5).

The Lieutenant Governor in Council may designate any person or class of persons as employees to whom this Act applies, by regulation (s. 7(3)). Conversely, the Lieutenant Governor in Council may also designate any person or class of person as employees to whom this Act does not apply on the recommendation of the Treasury Board (s. 7(4)).

The Act does not apply to Provincial Court judges, judicial justices of the peace, or a master of the court appointed under *The Court of Queen's Bench Act* (s. 7(5)).

The Act prevails over all other legislation unless that legislation expressly states otherwise (s. 27).

Every amount paid, including amounts paid before the coming into force of this Act, to any person in excess of the amount that should have been paid under the statutory compensation framework is a debt due to the employer, in the case of an excess rate of pay; or to the government, in any other case (s. 28).

If passed, the Act comes into force on a day to be fixed by proclamation (s. 31).