

The Public Sector Employers Amendment Act

What You Need To Know



On November 1, 2023, Bill 5 (the Public Sector Employers Amendment Act, 2023), passed a first reading. The Bill in its current form marks a significant change for employers who are currently subject to the *Reform of Agencies, Boards and Commissions Compensation Act* (“**RABCCA**”). Bill 5 repeals *RABCCA* (including its regulations and orders), and replaces it with amendments to an existing law, the *Public Sector Employers Act* (“**PSEA**”).

At a high level, the amendments to the *PSEA* will (like *RABCCA*) limit public sector employers’ ability to make decisions around compensation for non-union employees and board members. The Government has indicated that it will allow for greater flexibility in compensation through this legislation. While the legislation is less prescriptive than *RABCCA*, the extent to which employers will have flexibility will depend on how the Minister exercises a range of broad, discretionary powers surrounding compensation.

Below please find a summary of the key changes resulting from Bill 5.

- **Who is impacted:** *PSEA* will apply to a range of entities and their subsidiaries. This includes public post-secondary institutions, school boards, regional health authorities, and public agencies. There is also a broader category of people who receive funding from the Crown that may be caught by this legislation.
- **Minister’s Power to Issue Directives and Compensation Policies:** Previously, *PSEA* only allowed directives to be issued related to unionized employees. Under Bill 5, the Minister has expanded powers to issue directives related to compensation and compensation policies. The Minister can now issue mandatory directives and policies around compensation for non-union employees, and for board members. This replaces the prior scheme under *RABCCA*, where compensation was dictated by regulations and by ministerial orders.
- **Compensation Plans:** The Minister may now in their discretion compel employers to issue compensation plans for non-union employees. The plans go through an approval process, wherein the Minister can deny approval of a plan and issue directives around any amendments to any plans.
- **RABCCA Elements Recaptured:** Much of what was in *RABCCA* regarding limits on compensation has been recaptured in the amendments to *PSEA*. For example, any contract provision that exceeds any limits set under *PSEA* (be it by directive, compensation plan or otherwise), is void and unenforceable. *PSEA* also includes the ‘bridging’ language from *RABCCA* related to changes to compensation plans for

existing employees. Finally, and significantly for employers, it will incorporate the provisions from *RABCCA* that removed any right to make claims related to the implementation of anything done under the *PSEA*.

- **Employer Committees:** Bill 5 has created a new category of entities called “Employer Committees”. These are organizations that are created by ministerial order (meaning that the Minister could create such a committee on request), which are meant to assemble employers. Their mandates appear to be related to coordinating bargaining and compensation within groups of employers. The Minister has the authority to designate many structural elements of these committees (e.g., identify a government representative on a committee), and also has the authority to issue mandatory directives to an Employer Committee. The structure of these committees is generally less rigid than for Employer Associations, which are described below.
- **Employer Associations:** Bill 5 gives the Minister the ability to establish new Employer Associations. The Employer Associations created under Bill 5 will have a broader mandate than Employer Committees, as they will also be involved in coordinating human resources practices, non-union compensation, and other matters related to labour relations and human resources. Like the Employer Committees, the Minister has the ability to enact many of the structural elements of these associations, and can issue mandatory directives to these associations. There is much more structure to these associations than appears to be contemplated than for an Employer Committee.

In the case of both Employer Associations and Employee Committees, employers in particular sectors will need to consider whether there is any value to them being involved in these structures, as they may have some ability to petition the Minister to allow for their creation. They will also need to consider practically how these arrangements are operationalized, as they raise several important labour relations questions, including related to collective bargaining.

- **Employer Associations and Bargaining:** If authorized by a member employer, an Employer Association can bargain on behalf of that employer. This does not create a sectorial bargaining model for these associations. Consideration will have to be given to how any arrangement is implemented between an Employer Association and an employer vis-à-vis bargaining.
- **Transition from *RABCCA*:** Bill 5 refers to the fact that regulations will be made regarding the transfer from *RABCCA* to the new framework under *PSEA*. It does not speak to how those regulations will function. I expect that any regulations will ensure that the status quo under *RABCCA* will remain in place for a period of time, as many of the elements of the new *PSEA* provisions are brought into operation. Organizations should assume that compensation will be frozen following the enactment of Bill 5

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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