

Protecting a Sustainable Public Sector for Future Generations Act, 2019

Technical Briefing

Note: This is not a legal document. Readers are encouraged to consult the proposed legislation directly.

November 7, 2019

The Act applies to the following employers:

- The Crown in right of Ontario, every agency thereof and every authority, board, commission, corporation, office or organization of persons, a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council
- School Boards
- Universities and Colleges
- Hospitals
- Not-for-Profit Long-term care homes
- Ornge
- Children's aid societies
- Every authority, board, commission, corporation, office or organization of persons, that in 2018 received at least \$1,000,000 in funding from the Government of Ontario, as determined for the purposes of the *Public Sector Salary Disclosure Act, 1996*

Does NOT apply to:

- Municipalities
- Local boards as defined in the Municipal Act, 2001 and the City of Toronto Act, 2006
- Every authority, board, commission, corporation, office or organization of persons, a majority of whose members, directors or officers are appointed or chosen by or under the authority of the council of a municipality
- Indigenous communities, Indigenous community-run organizations, and certain entities that employ First Nations Constables
- Any organization that undertakes its activities for the purpose of profit to its shareholders

Application to employees:

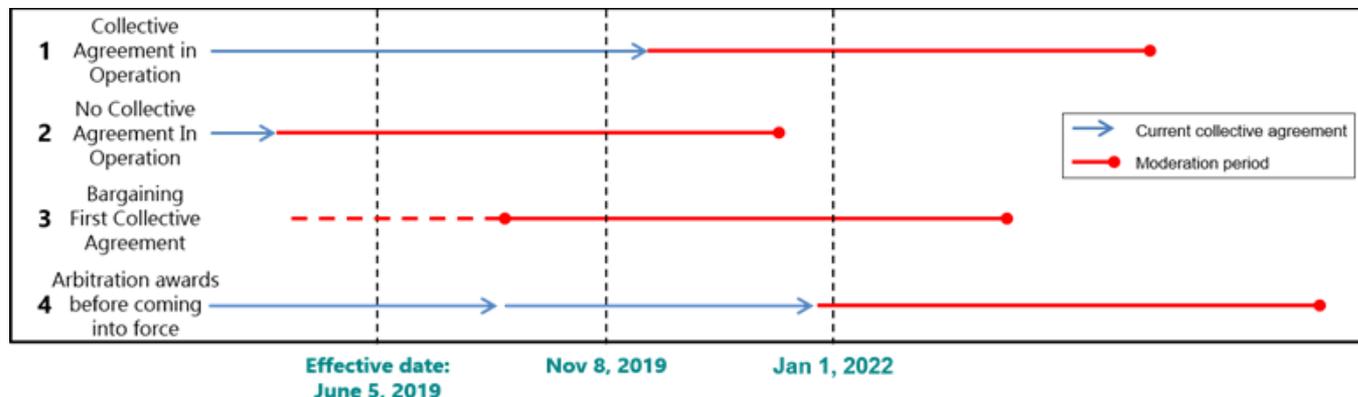
- This Act applies to the employees of the employers to whom this Act applies
- This Act does not apply to designated executives within the meaning of the *Broader Public Sector Executive Compensation Act, 2014*
- This Act does not apply to judges, deputy judges, justices of the peace, or case management masters

Moderation period

The moderation period is a three year period for all in scope employees:

- 1. Collective agreement in operation** on June 5, 2019: Moderation period begins on the day immediately following the day the collective agreement expires.
 - 2. No collective agreement in operation** on June 5, 2019 and previous agreement expired: Moderation begins on the day immediately following the day that the previous collective agreement expired.
 - 3. Parties bargaining a first collective agreement** on June 5, 2019: Moderation period begins on the commencement date of the collective agreement.
 - 4. Arbitration awards that came down before the Act came into force** will not be re-opened: the moderation period begins on the day immediately following the day the agreement giving force to the award expires.
- Scenarios 1-3 apply to both negotiated settlements and arbitration awards.
 - For **non-represented employees**:
 - The moderation period is the same period that applies to represented employees if the compensation plan provides that salary rates increase at the same rate as represented employees under a collective agreement.
 - If not applicable, the moderation period begins on a date to be selected by the employer that is after June 5, 2019 and before January 1, 2022.

Illustrative Moderation Period Application:



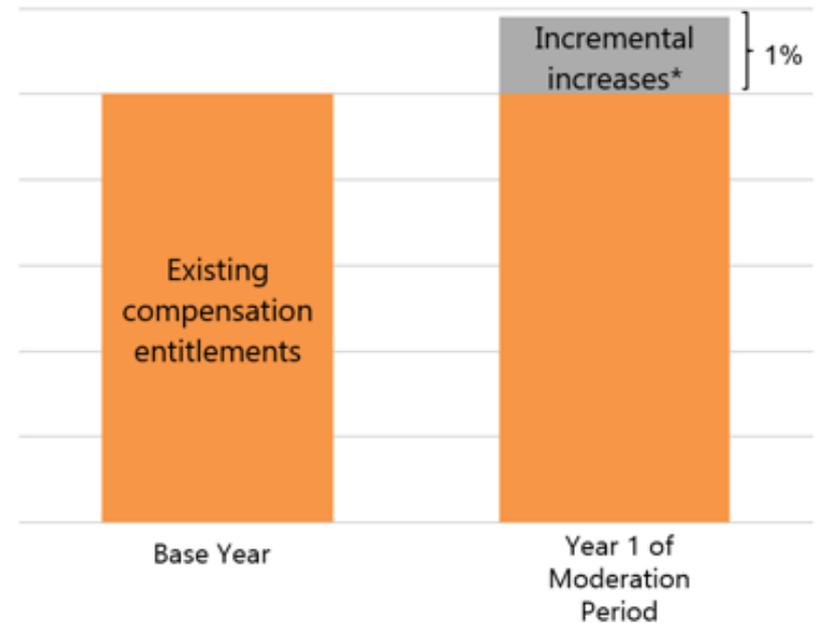
Compensation

- During the applicable moderation period, no collective agreement, arbitration award, or employer may provide for any incremental increases to existing compensation entitlements or for new compensation entitlements that in total equal more than one per cent on average for all employees covered by the collective agreement for each 12-month period of the moderation period.

Salary rate

- No collective agreement, arbitration award, or employer may provide for an increase in a salary rate applicable to a position or class of positions during the applicable moderation period that is greater than one per cent for each 12-month period of the moderation period, but they may provide for increases that are lower.

* For greater certainty, an increase in a salary rate is an increase to compensation entitlements.



Exception, certain increases

The act does not prohibit an employee's salary rate from increasing in recognition of the following matters, if the increase is authorized under a collective agreement or compensation plan:

- The employee's length of time in employment.
- An assessment of performance.
- The employee's successful completion of a program or course of professional or technical education.

Oversight Mechanisms

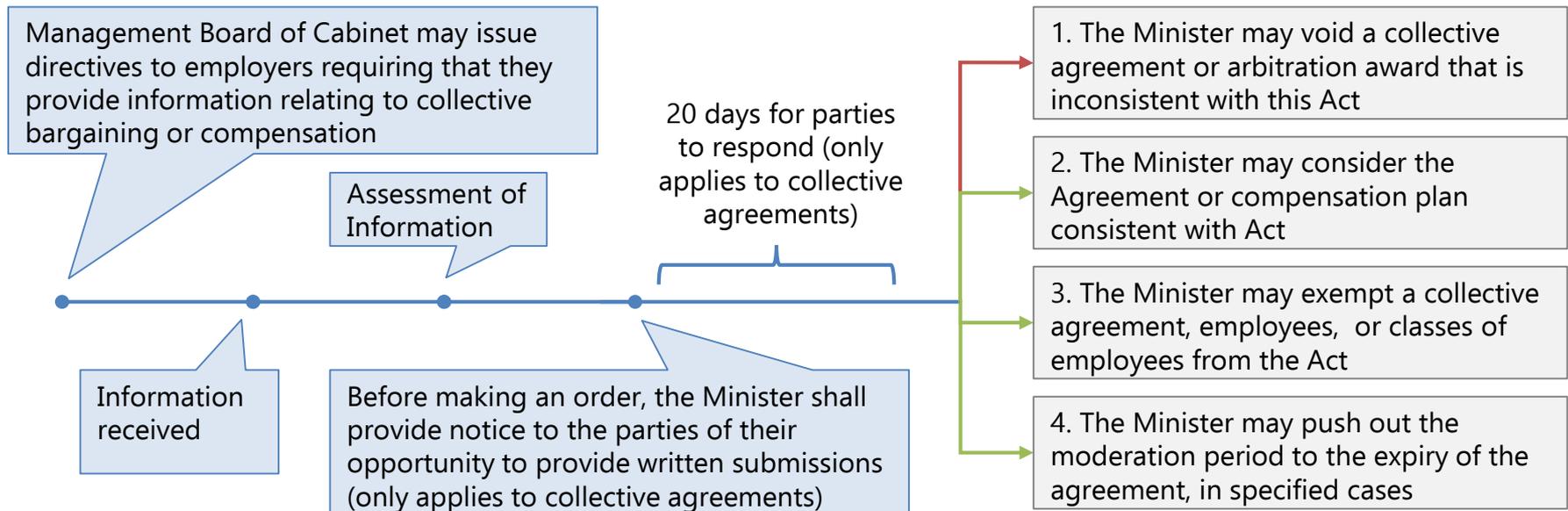
Management Board of Cabinet may issue directives to employers and to employers' organizations requiring that they provide information relating to collective bargaining or compensation.

Potential Outcomes

The Minister may:

1. make an order declaring that a collective agreement or an arbitration award is inconsistent with this Act
2. exempt a collective agreement from the application of this Act
3. specify that this Act does not apply to employees or classes of employees
4. for negotiated agreements reached after June 5, 2019 and before the Act came into force, and which expire no later than December 31, 2021, make regulations specifying that the moderation period begins after that agreement expires.

Illustrative Oversight Process



Anti-avoidance measures:

Restrictions on compensation measures that violate the spirit of the Act

An employer shall not provide compensation before or after the applicable moderation period to an employee in order to supplement the moderation period salary rates provided for in the Act.

Rights continue

Right to bargain collectively

- Subject to the other provisions of this Act, the right to bargain collectively is continued.

Right to strike

- Nothing in this Act affects the right to engage in a lawful strike or lockout.

Other rights

- Nothing in this Act or in the regulations shall be interpreted or applied so as to reduce a right or entitlement under,
 - (a) the *Human Rights Code*,
 - (b) section 42 or 44 of the *Employment Standards Act, 2000* (*i.e., equal pay for equal work and no differentiation in benefit plans*);
 - (c) Part IX of the *Employment Standards Act, 2000* (*i.e., minimum wage*) or,
 - (d) the *Pay Equity Act*.