



Excluded & Executive

Compensation

*A Guide to
Excluded and Executive Compensation
In the British Columbia Public Sector*

From

The Public Sector Employers' Council

(Updated July 2009)

Introduction

This guide is intended for general information purposes only. Anyone wishing to determine his or her legal rights and responsibilities should consult the Public Sector Employers Act.

The Public Sector Employers' Council (PSEC) was established in 1993 under the *Public Sector Employers Act* to set and co-ordinate strategic directions for human resource management and labour relations in the broad public sector.

The PSEC Secretariat carries out work on behalf of the Council and the Minister responsible for the Act, including the coordination of CEO, executive, and excluded compensation across the B.C public sector. The *Public Sector Employers Act* also sets out certain rules and requirements regarding excluded and executive compensation practices in British Columbia's public sector.

Excluded & Executive Employees

Excluded and executive employees are those employees who are employed by a public sector employer and who are not covered by a collective agreement. In order to ensure fair and reasonable compensation practices for this group of employees, provisions of the *Public Sector Employers Act* set out certain rules and requirements regarding excluded and executive employee compensation. In particular the Act addresses:

- **Compensation Plans**
- **Severance Standards including accrual of Vacation and Sick Leave**

The Act's provisions regarding excluded and executive compensation do not apply to private sector employees or unionized employees. As well, employers that contract with a public sector employer for the provision of services are also generally not included under the Act. For example, employees of a janitorial or security contractor to a college are not covered.



Compensation Plans

Compensation plans for excluded and executive employees ensure that their compensation is reasonable and fair.

The *Public Sector Employers Act* allows the Minister responsible for the Act to direct employers to create compensation plans for excluded or executive employees of the employer, or to direct employers' associations to create plans on behalf of employers in the association's sector. The Minister's Direction may focus on certain groups of senior employees, or on all excluded and executive employees.

Once the Minister has issued such a Direction, all compensation management must continue only based on previously approved compensation plans. For instance, employers can still make compensation changes that result from bona-fide promotions and reclassifications, provided those changes are consistent with compensation ranges that were in effect before the Minister's Direction. However, employers may not make any changes to compensation outside of the existing compensation plans without the Minister's prior approval. This would include, for example, providing an across-the-board increase to compensation ranges, or hiring a new executive at a salary above existing compensation ranges.

In putting together a compensation plan, public sector employers and employers' associations traditionally include the following elements:

- the positions or classes of positions covered by the compensation plan;
- the total compensation range (the sum of base salary, incentive pay, benefits, perquisites) for each position or class of positions covered by the plan;
- the base salary ranges for each position or class of positions;
- a description of any policies or criteria governing base salary adjustments;
- a description of any re-earnable incentive plans or bonus plans (including target and maximum amounts), and any policies or criteria governing the



Compensation that is in excess of an approved compensation standard is a debt payable to government.

payment of re-earnable incentives or bonuses, and a description of the performance measures and targets¹;

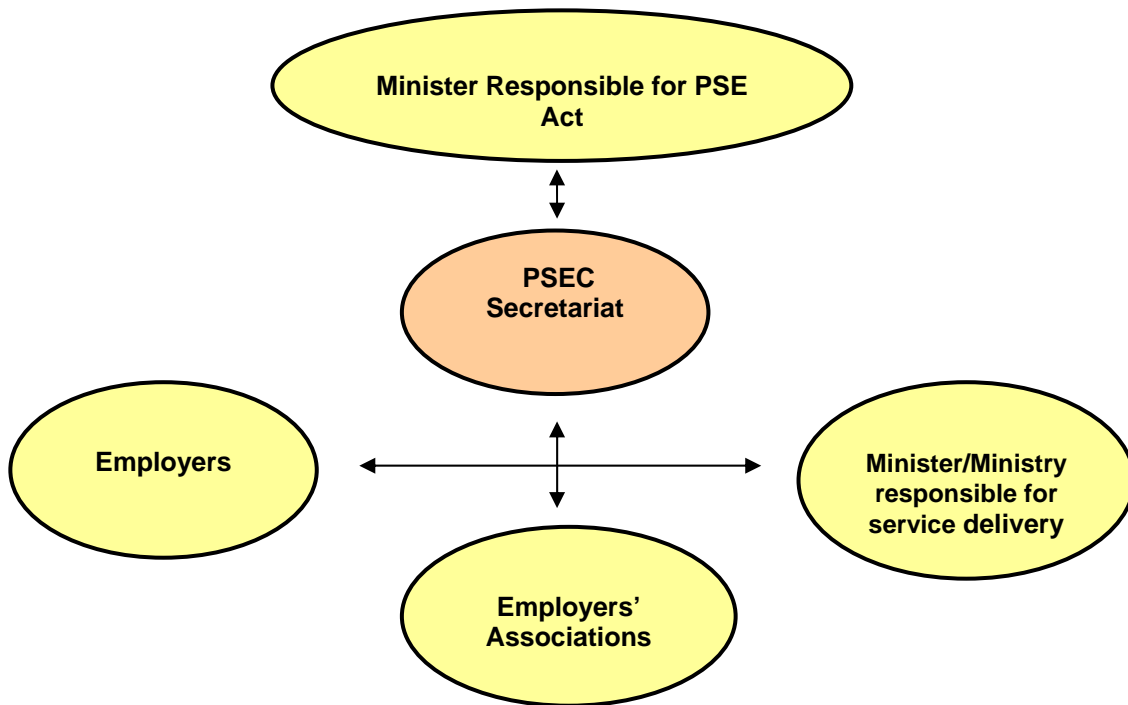
- relevant sectoral standards or guidelines governing matters such as payment for membership in professional associations, reimbursement for leased vehicles and other expense reimbursement;
- a description of any employee benefits;
- a description of any perquisites (e.g., car or discretionary allowances);
- a compensation study showing how compensation levels within the relevant labour market compare with compensation levels for those positions covered by the plan (“relevant labour market” being the market from which employer recruits and to who an employer loses employees); and
- any other information that may be relevant, including evidence of recruitment and retention difficulties, compression or inversion or other internal issues, and/or other business considerations.

Compensation Plan Approval Process

The Act provides that the Minister responsible must approve all compensation plans.

Once approved, the compensation plan is a legally enforceable compensation standard. Any compensation that is paid in excess of an approved compensation standard is a debt payable to government.

¹ Industry best practice guidelines for variable incentive pay compensation plans can be found on the PSEC website: <http://www.aved.gov.bc.ca/psec/executivecompensation.htm>



The PSEC Secretariat assists the Minister in implementing the *Act* by working with employers and employers associations as they prepare compensation plans, coordinating the preparation of plans, and advising the Minister on proposed plans.

The PSEC Secretariat is guided in this work by the following principles:

- **Sustainability** – Balancing affordability with the ability to deliver services in the most efficient and effective way possible over the long-term, both from an employer and cross-sectoral system perspective.
- **Accountability** – Strong Minister/ Strong Board governance model for CEO compensation; ministers responsible must support a CEO's compensation plan. PSEC ensures that the minister responsible for a service area supports compensation plans that in turn support the service delivery needs/outcomes of a public sector employer.
- **Transparency** – The *Act* requires public sector employers to disclose publicly the terms and conditions of employment – including compensation – for public sector employees who have a base salary over \$125K. The *Act* also requires that employers make contracts of employment for these employees available for inspection during regular office hours. The *Financial Information Act* requires employers to report base salary over \$75K.

- **Labour Market** – Balancing affordability with the ability to remain competitive in a relevant labour market (i.e., those organizations from which an employer recruits and to which it loses people).

The PSEC Secretariat asks the following questions when assessing proposed CEO, executive and excluded compensation plans:

Policy and Legislation

- Does the proposed compensation plan adhere to relevant government policy and legislation (e.g. public sector mandates, termination standards, vacation carry-over)?
- If any elements of the proposed compensation plan do not adhere to the policy and legislation, is an exception appropriate (has a business case been made)?
- Has the employer demonstrated that the proposed compensation plan (or changes to the existing plan) supports the delivery of its services and fulfillment of its mandate?
- Does the employer understand its accountability obligations under the *Public Sector Employers Act* and the *Financial Information Act*?

Links to Ministry Policy Direction

- Has the ministry responsible for the service delivery area been consulted to ensure that the proposed compensation plan is consistent with the employer's service delivery mandate and the Province's vision of the organization?
- Does the Minister Responsible for the service delivery area support the proposed compensation plan?

Financial

- Have all cost items been identified, including re-earnable incentives, general wage increases, wage and non-wage benefits, pension, perquisites, and been accurately costed as part of the total compensation package?
- Have all other cost and non-cost items been properly accounted for (e.g. reimbursements, perquisites, discretionary allowances)?

Labour Market

- Is there evidence of recruitment/retention issues?
- Has the relevant comparator market been properly identified?
- Is data on wage/benefit levels in comparator market accurate?
- Have any barriers to recruitment/retention issues been identified and removed (e.g. barrier to professional development)?

- Is there support for the particular quantum of labour market increases proposed?
- Is the proposal limited to “mission-critical” positions?

CEO Compensation Approval Process

Public Sector Employers Act

Strong Minister/ Strong Board governance model: CEO compensation consultation between the Board Chair and Minister responsible.

Compensation plans submitted to PSEC include:

- Labour market analysis
- Demonstrated rationale for changes
- Linkage to corporate strategic plan
- Compensation costing (salary, benefits, perquisites)

PSEC due diligence:

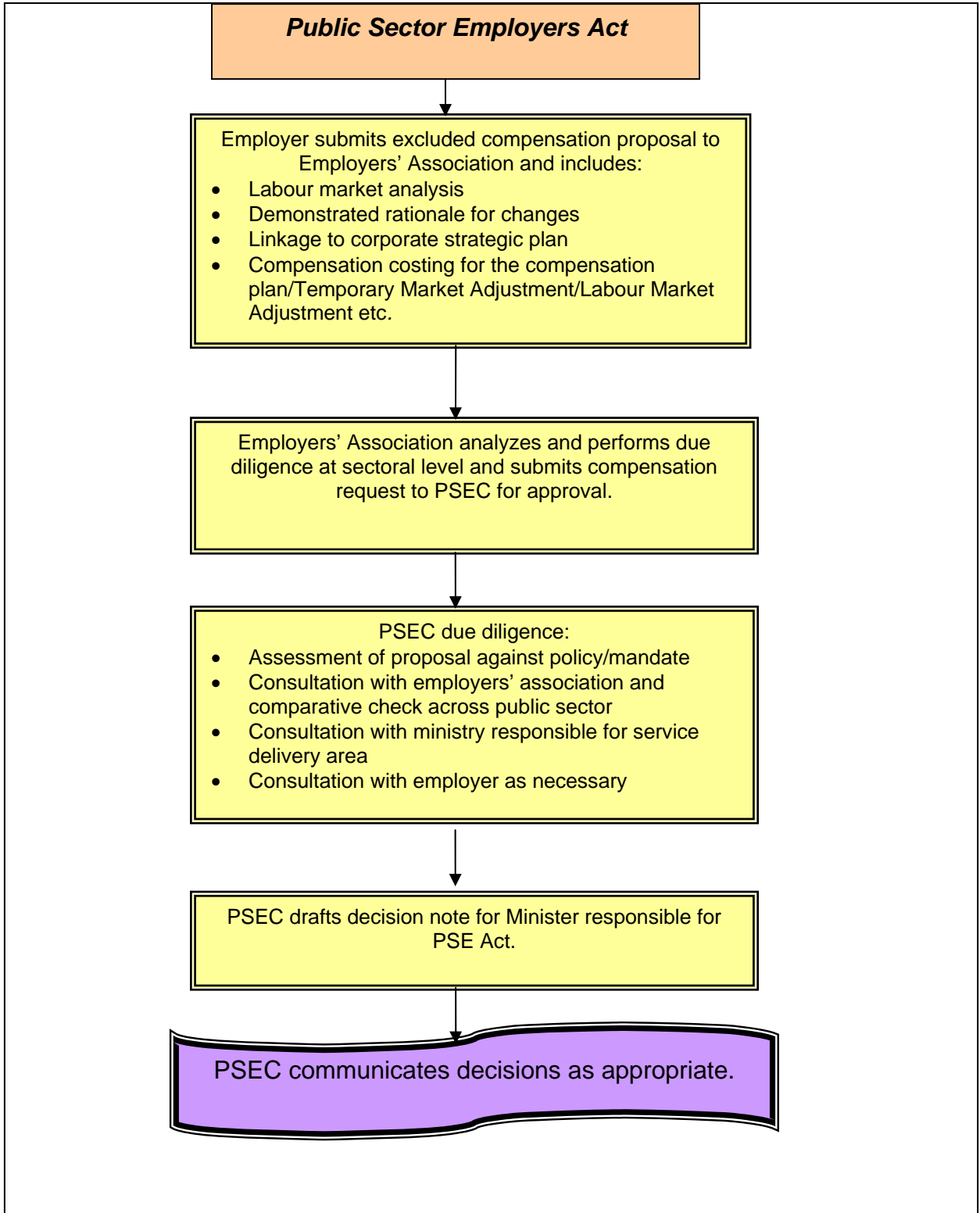
- Assessment of proposal against policy/mandate
- Consultation with employers' association and comparative check across public sector
- Consultation with ministry responsible for service delivery area
- Consultation with employer as necessary

PSEC drafts decision note for Minister responsible for PSE Act.

PSEC communicates decisions as appropriate.

Executive and Excluded Compensation Approval

Elements involved in approval process



Accumulation of Vacation Leave

Accumulation of vacation leave is governed by changes to the *Public Sector Employers Act* which came into effect January 1, 2003. The *Act* stipulates that unused vacation leave may be carried over to the year following when it was accumulated; however, if it is not used by the end of that year it must be paid out. The only exception to this is for vacation time that was accumulated prior to January 1, 2003 – this accumulated vacation time can still be carried over year to year and will be paid out at an employee's conclusion of employment.

Accumulation of Sick Leave

Accumulation of sick leave is also governed by changes to the *Act* made on January 1, 2003. As of January 1, 2003 sick leave can still be accumulated, but cannot be paid out in the form of additional vacation leave or a cash payment or any other benefit, other than sick leave. The only exception is for sick leave that was accumulated prior to January 1, 2003 - this accumulated sick leave can still be used based on the previous rules under which the leave was accumulated.



Vacation and sick leave days are paid out at the rate at which they were earned.

Termination Standards

The *Public Sector Employers Act* includes employment termination standards for excluded and executive employees. The termination standards address:

- the amount of severance that can be paid to employees;
- appropriate use of retirement allowances;
- repayment of excessive severances;
- re-employment in the public sector;
- public disclosure of compensation information; and
- enforcement of the Termination Standards.

Amount of Severance Payable

Effective October 21, 2002, the maximum severance in lieu of notice for most excluded public sector employees is capped at a maximum of 18 months.

The Employment Termination Standards also include a grid that limits severance payable to chief executive officers, presidents, Deputy Ministers in the public service, and School Superintendents.

The grid provides that any severance paid to these senior executives must not exceed the following:

- Up to six months notice or severance for less than 12 months service in the position;
- Up to nine months notice or severance for 12 to 17 months service in the position;
- Up to 12 months notice or severance for 18 to 35 months service in the position;
- Up to 14 months notice or severance for 36 to 47 months service in the position;
- Up to 16 months notice or severance for 48 to 59 months service in the position;
- Up to 18 months notice or severance for 60 or more months service in the position.

This severance grid is designed to bring certainty to severances for senior public sector employees and applies to all employment contracts, including definite and indefinite term contracts.

The Termination Standards allow Treasury Board to approve exceptions to the severance grid in rare circumstances, such as where a public sector employer needs to recruit a particular candidate. Treasury Board is not permitted to approve exceptions that would provide for more than 12 months severance for fewer than 18 months employment.

In the case where a person is promoted into a Deputy Minister, Chief Executive Officer/President or School Superintendent position *with the same employer*, the person's length of service with the same employer may be recognized in determining an appropriate notice of termination or severance arrangement.



Retiring Allowances

The *Employment Termination Standards* define a “retiring allowance” as a payment that an employee receives on or after retirement in recognition of the employee’s service. The Standards provide that retiring allowances may only be paid when an employee retires from employment, and that an employee may not receive both a severance and a retiring allowance. The only exception is when a retiring allowance is part of a labour adjustment policy or program that has been approved by the Minister responsible for the *Act*. Superannuation, pension benefits

Retirement allowances may only be paid when an employee retires.

and an amount paid in the event of the death of an employee are not considered retiring allowances.

Repayment of Severance

Any severance paid that is in excess of what is allowed under the *Public Sector Employers Act* or the Termination Standards is a debt payable to government. This includes payments in excess of the 18 month cap or the severance grid applicable to senior executives, and also includes “double-dipping” - where a public sector employee collects both a public sector severance and a salary from another public sector employer at the same time. Where employees are re-employed in the public sector during their period of severance, the employee must notify their former employer of their re-employment during the severance period and pay back to the employer any amount of severance received after re-employment.



Collecting severance payments and a salary from a public sector employer at the same time is not permitted.

Wherever possible, public sector employers should give working notice rather than severance. An employee who refuses further assignments is considered to have resigned and may not be paid severance. If a public sector employer chooses to provide severance instead of notice, it is the employer’s choice whether to provide a lump sum payment instead of periodic payments. Periodic payments facilitate the recovery of excessive sums and may avoid an over-payment of severance if an employee is re-employed in the public sector. However, lump sum payments may be administratively more efficient for smaller severance settlements, and may also help the employer to negotiate an overall lower severance amount.

Compensation Reporting

Reports to the Public

Public sector employers have two public reporting obligations under the *Public Sector Employers Act*.

1. ***Publishing of Statements of Executive Compensation:*** All public sector employers must publish compensation information on their websites for the CEO and the next four highest paid/ranking executives earning a base salary of \$125,000. School Districts must publish compensation information for all Superintendants, regardless of their salary. This disclosure, or *Statement of Executive Compensation*, must include information about base salary, benefits, pension contributions, and any performance payments. The disclosure must also explain the employer's compensation philosophy and compensation objectives, how the compensation paid relates to the employer's performance targets, and how the actual compensation paid relates to both of the above. The guidelines for the *Statement of Executive Compensation* can be found at the following site: http://www.aved.gov.bc.ca/psec/documents/public_sector_reporting_guidelines.pdf.
2. ***Making Available Contracts of Employment:*** All public sector employers are also required to make available for public inspection during normal business hours contracts of employment for senior employees (defined as any employee earning a base salary of \$125,000 or more). In addition, employers are required to make public any reports filed with the Chief Executive Officer of the PSEC Secretariat (see below for more information on reports to the CEO of the Secretariat).

Public sector employers also have public reporting obligations under the *Financial Information Act (FIA)*. All employers must disclose salary and expenses for all employees earning \$75,000 or more as part of their Financial Statements made in accordance with the *FIA*.

Report to PSEC

Public sector employers also have reporting obligations to the Chief Executive Officer of PSEC. Specifically, employers are required to file with the CEO of PSEC any contract of employment entered into with a senior employee with a salary of \$125,000, and must do so within 15 days of the contract being entered into. "Compensation" includes all remuneration provided to an employee by a public sector employer for service with the employer, whether in the form of money or benefits.

To comply with the *Act*, public sector employers must provide the CEO of PSEC with the following information:

- **a report specifying the terms and conditions of employment relating to the senior employee's compensation, and**
- **a copy of the written contract if there is one.**

Employers are also required to report any changes to a term or condition of employment relating to a senior employee's compensation. These changes must be reported to the CEO of PSEC within 15 days of the change. Additionally, where a senior employee receives severance, the employer is required to report the severance to the CEO of PSEC.


These reporting provisions are in place to allow the Province to ensure that compensation and severance practices in the public sector are consistent with the *Act* and to ensure that public sector employers are complying with the law.

If an employer fails to comply with any of the above requirements the Minister may declare all or part of a contract of employment to be void.

Senior Employee Compensation Database

To assist employers in meeting their reporting requirements, the PSEC Secretariat has introduced a web-based application to replace the current paper-based reporting.

The Senior Employee Compensation (SEC) database is a secure and efficient way for public sector employers to report senior employee compensation information and for the Secretariat, employers associations, and ministries to obtain up-to-date compensation information, including information about severances. Protected access to the SEC database is available at: <https://pseclrrs.gov.bc.ca/SEC/logon.aspx>

Public sector employers will move to the electronic system by September 30, 2009. Until then, the paper form for Public Sector Compensation Reporting can be found at [Reporting form for Senior Employees](#) 

Enforcement

The *Public Sector Employers Act* has a number of enforcement provisions, including the following:

- Any compensation that is paid to an employee that is in excess of an approved compensation plan is a debt payable to government. This includes, for example, salary increases in excess of a compensation plan approved by the Minister responsible for the *Act*, or compensation paid under a compensation plan that has not been approved by the Minister. Severance payments that are in excess of the *Act* are also a debt payable to government.
- The *Act* provides public sector employers with one year to recoup payments made to employees that are in contravention of the *Act*.
- If an employer fails to report a new or revised employment contract within 15 days of the contract being entered into or revised, the Minister may declare all or part of the contract void.
- Any provision of a contract of employment that states that all or part of the contract is confidential is void under the *Act*.

Summary

The *Public Sector Employers Act* sets out important rules and restrictions on compensation paid by public sector employers to public sector employees:

- ***Public sector employers, or employers' associations, must have in place compensation plans that are approved by the Minister.***
- ***Compensation that exceeds a compensation plan approved by the Minister is a debt payable to government.***
- ***Severance payments must not exceed 18 months, and severance payments to CEOs, Deputy Ministers and School Superintendents must not exceed the severance grid.***
- ***Unused vacation must be taken or be paid out by the end of the year following the year in which it was accumulated.***
- ***Accumulated sick leave can only be used for illness.***
- ***Retirement allowances can only be paid on retirement and an employee may not receive both a retirement allowance and a severance payment.***

- ***Public sector employers are required to submit employment contracts and compensation reports to the CEO of PSEC within 15 days of signing or amending a contract. If they fail to do so, the Minister may declare all or part of the contract to be void.***
- ***Public sector employers are required to make contracts available to the public on request.***
- ***Public sector employers are required to make comprehensive web-based disclosures for the CEO and next four highest paid/ranking executives earning a base salary of at least \$125,000 as part of their annual reporting. School Districts must disclose compensation for all Superintendents, regardless of salary.***
- ***The practice of double dipping (collecting both a severance and receiving a salary from a public sector employer), is prohibited, and amounts received in violation of the Act are a debt repayable to Government.***