

## POLICY 95-06

# Compensation and Employment Standards For School District Employees Not Subject To A Collective Agreement

### Background

Section 6 of the *Public Sector Employers Act* authorizes the employers' association to coordinate "...compensation for employees who are not subject to collective agreements."

In accordance with this statutory direction, compensation and employment standards were developed by the British Columbia Public School Employers' Association (BCPSEA) and approved by the Public Sector Employers' Council (PSEC). BCPSEA introduced the standards to the K-12 public education sector in 1995; a revision to the standards was approved by PSEC and distributed to school boards in 1999.

In October 2002, government enacted amendments to the *Public Sector Employers Act* through Bill 66, *Public Sector Employers Amendment Act*. With these amendments, the K-12 public education sector, along with the public sector as a whole, moved from a voluntary compliance model with respect to administration of exempt compensation and contracts to a statutory model. On December 6, 2002, the Minister of Finance approved the BCPSEA Compensation and Employment Standards as a compensation plan under section 14.3 of the *Public Sector Employers Act*.

In May 2008, further amendments to the *Public Sector Employers Act* removed the position of Superintendent of Schools from coverage under these Standards. Boards of Education are solely responsible for the review and determination of compensation for the position of Superintendent.

For all other executive and exempt positions, boards of education are required to adhere to these Standards as a way of demonstrating fiscal responsibility and sound management practices to the public and to their employee groups.

## Objectives

An effective set of compensation and employment standards must respect the autonomy and accountability of individual elected boards of education while at the same time ensuring compliance with statutory requirements under applicable legislation.

In developing these standards, every effort has been made to:

1. Provide coordination and comparability for exempt employees in the K-12 sector.
2. Enable boards of education to attract and retain high quality personnel. This implies that compensation must:
  - be competitive within the sector (within Canada for the three senior levels — Superintendent of Schools, Assistant Superintendent and Secretary Treasurer — and within BC for other management positions)
  - be reasonably comparable to remuneration received for similar responsibilities in the public service in other public sectors, and to a lesser extent, private sector organizations
  - be sufficiently attractive to retain existing personnel and to attract new individuals of high calibre to exempt positions
  - have appropriate relationships from one position to those at other levels.
3. Provide full disclosure.
4. Account for total compensation.
5. Recognize the diversity of school districts.
6. Provide a framework that assists school boards in complying with their fiscal objectives and support in fulfilling their responsibilities.
7. Provide simplicity, timeliness and ease of administration.

## Compensation and Employment Standards

The Compensation and Employment Standards (the “Standards”) consist of the following:

- I. **Roles, Responsibilities, and Reporting Requirements** to ensure full disclosure to the public at the local board of education level, to BCPSEA, and to the Public Sector Employers’ Council (PSEC).
- II. **Compensation standards** to ensure consistent compensation administration practices in the K-12 public education sector. The compensation standards must be incorporated into individual contracts of employment, as well as letters of appointment and general terms and conditions of employment.

The compensation standards include salary ranges (for illustrative purposes, see Appendix A).

These salary ranges are based on comprehensive compensation surveys conducted in the public, private, and public education sectors. The salary ranges reflect a defensible approach for determining competitive salary levels for exempt positions in the public education sector and reflect the public’s desire for fiscally responsible compensation levels in the public sector generally.

The salary ranges include provision for re-earnable annual performance-based incentive pay for the position of Secretary Treasurer. (A similar incentive may also be established by boards of education for the position of Superintendent.)

- III. **Employment standards** to ensure consistent employment administration practices in the K-12 public education sector. The employment standards must be incorporated into individual contracts of employment, as well as letters of appointment and general terms and conditions of employment.

## I. Roles, Responsibilities and Reporting Requirements

### 1.1 In meeting the objectives of the Standards:

#### **BCPSEA**

- Provides technical assistance to boards of education for determining the application of these standards and legislative requirements to exempt positions in the school district. This includes determining levels of compensation and classification of positions within the benchmark compensation categories.
- Will determine any requests for variance of this policy.

#### **Boards of education**

- Are required to develop and maintain written policies and employment contract provisions with respect to procedures governing employment, compensation, benefits, and expenses that comply with the BCPSEA Standards and relevant legislation.

Compensation for all exempt positions will take into account:

- Total compensation relationships inside and outside the organization
- Special circumstances such as market conditions, geography, cost-of-living, and job responsibilities
- Need for public accountability.
- Maintain high ethical standards and avoid conflict of interest with regard to expense and compensation procedures. In particular, no employee should approve a benefit payment or expense reimbursement to him/herself.

### 1.2 Reporting Requirements

- **Boards of education are required to:**
  - Provide on request to BCPSEA, compensation and employment-related policies, employment contracts, and compensation information for all exempt staff. This includes complying with the reporting requirements under the *Public Sector Employers Act* with respect to executive compensation disclosure

and reporting of employment terminations under the *Employment Termination Standards Regulation*.

- Provide on request to the public, current information on compensation and employment-related policies, and total compensation levels for all exempt staff. This includes complying with the reporting requirements under the *Public Sector Employers Act* with respect to executive compensation disclosure.
- Submit any request for variance of this policy to BCPSEA for determination.
- **BCPSEA is responsible to:**

Coordinate the reporting of total compensation and contract matters for executive compensation disclosure as defined in the *Public Sector Employers Act*, as well as other exempt employees in the K-12 public education sector.

## II. Compensation Standards

### 2.1 Compensation data

In order to ensure defensible and competitive compensation levels in the K-12 public education sector, BCPSEA conducts a triennial survey of total compensation paid to exempt benchmark positions.

Benchmark positions are present in a majority of school districts; they represent the spectrum of the exempt staff workforce and have well known and relatively stable job content.

In determining the relevant labour markets for obtaining compensation data for executive and exempt employees, BCPSEA considered the following questions:

- what is the supply sector for these employees (from where do school boards recruit them)
- what is the destination sector for these employees (to where do school boards lose them).

The scope of the relevant labour market for top level positions in the K-12 public education sector includes public boards of education in British Columbia, Alberta and Ontario. Other organizations in the British Columbia public sector are also surveyed. In addition to the triennial survey, BCPSEA conducts total cash surveys on an ongoing basis to ensure consistent compensation practices with the relevant labour markets.

## **2.2 Elements of total compensation**

- Annual base salary
- Declared personal portion (for Revenue Canada purposes) of vehicle allowance or benefit received by the provision of an employer-leased vehicle
- Unvouchered expense allowance, with the exception of reasonable meal or travel per diems that are directly related to a specific activity on behalf of the employer
- Rent-free or subsidized housing (in accordance with Revenue Canada reporting requirements)
- Northern or isolation allowance
- Vacation travel allowance
- Employer contribution towards employee benefits, including:
  - medical, health and dental insurance plans
  - life insurance and long-term disability plans
  - employee and family assistance plans
  - pension plans
  - any other benefits.
- Annual re-earnable performance-based pay incentives
- Any other forms of compensation.

## **2.3 Compensation administration**

Exempt compensation is administered within the following framework.

### **2.3.1 Compensation structure**

- Boards of education are responsible to establish and maintain a defensible, credible compensation structure for executive and exempt employees, taking into account all the elements of total compensation.
- The annual base salary component of total compensation should reflect an independent analysis of labour market conditions (such as the BCPSEA triennial total compensation survey) and provide for sufficient differential above positions supervised to attract and retain individuals of a high calibre.

### 2.3.2 Compensation adjustments

- Adjustments to exempt compensation levels must be reasonable and defensible, and reflect the public's desire for financially responsible public sector compensation practices.
- Adjustments to exempt compensation levels must be administered within existing operational budgets.
- Service levels cannot be reduced to fund exempt compensation levels.
- Compensation mandates adopted by the Public Sector Employers' Council from time to time are the official policy of BCPSEA and any adjustments to exempt compensation levels will be considered within the context of the applicable compensation mandate.
- Any increases in total compensation must be approved by BCPSEA prior to implementation by the board of education.
- Boards of education must obtain approval from BCPSEA to proceed with development of a performance-based incentive plan for the Secretary Treasurer. BCPSEA will work with the school district to develop a performance-based incentive plan; such a plan must be approved by both the board of education and BCPSEA. Upon approval and adoption of the plan, the district must make submission to BCPSEA for approval of any re-earnable payment under the plan prior to implementation by the school board.

### 2.3.3 Annual base salary ranges

- Annual base salary ranges are based on the number of full time equivalent students within a jurisdiction, organization operating budget, and geographic region. The ranges are defined around the “best fit” regression line for these positions.
- If the position is within the range, any increase to the salary level will not be permitted to exceed the maximum allowable under the Compensation Mandate in effect from time to time.
- If the position exceeds the maximum of the range, the position must be red-circled until it falls within the range.
- If the position is below the minimum of the range, the board of education may consider increasing the annual base salary to bring the position to the minimum point on the range, assuming there is an ability to pay; however, there is no obligation for an employer to increase the salary level even if the individual’s salary is below the minimum of the salary range.
- If the individual is newly hired to the position, the annual base salary must be set within the relevant salary range, but generally annual base salary should not be set at the maximum of the range.
- The portion of the salary range between the market rate for base salary and the range maximum is reserved for school districts that have an approved plan in place that provides for an annual re-earnable performance-based pay incentive (see Appendix 2). Such plans require prior approval of BCPSEA (see “Compensation adjustments” above).
- Re-earnable pay is to be reported as part of total compensation in the year in which it is earned and must be reported as a separate component of the total compensation package (i.e., it cannot be “rolled into” annual base salary for reporting purposes).



#### 2.3.4 Vehicle allowance/lease

- The portion of cash compensation attributable to an employer-provided vehicle allowance must be reported to BCPSEA as a separate component of total compensation and must not be “rolled into” the annual base salary portion.
- The board of education is responsible to ensure that:
  - vehicle leases, when utilized, are a cost effective transportation solution for the school district.
  - Revenue Canada and *Canada Tax Code* rules are complied with.
  - vehicle leases comply with the leased vehicle policy included as Appendix 3 to these Standards.

#### 2.3.5 Expense procedures

Boards are expected to have policies governing expense guidelines, procedures and reimbursement form.

#### 2.3.6 Inappropriate compensation policies

- The following compensation policies are deemed to be inappropriate for a public sector employer and must not be contained in any employment contract, letter of appointment, or general terms and conditions of employment.
  - Social and recreational club memberships for the benefit of an individual.  
  
However, an employer may provide club memberships for a business or human resource purpose.
  - Board paid spousal or companion travel.
  - Payment of all or a portion of retirement allowances and/or service recognition allowances while the employee is in the active employ of the board of education.

### III. Employment Standards

3.1 Boards of education are expected to implement the following compensation-related policies in employment contracts or terms and conditions of employment with staff not subject to a collective agreement:

#### 3.1.1 Contract term, contract renewal, contract termination

- Boards of education are responsible for ensuring that they are able to eliminate an exempt position upon reorganization of the district.
- Terms and conditions of employment must be open for review and negotiations on a regular basis at least once every five years or at the request of either party.
- Renewal of term employment contracts must require specific action on the part of the school board; provisions that provide for automatic rollover of term contracts in the absence of specific action by the school board are not permissible.

#### 3.1.2 Termination of employment

- Exempt employees are subject to the provisions of the *Public Sector Employers Act* including the *Employment Termination Standards Regulation*. The Act and Regulation are attached as Appendix B to these Standards.
- Where an employee gives cause for termination, the employer may terminate the employee in its absolute discretion, without any notice of termination or pay in lieu thereof.
- Severance payments shall not be made in the case of voluntary resignation.

#### 3.1.3 Retirement benefits

- An employer may provide a paid pre-retirement leave or allowance or paid retirement leave or allowance that is generally available to exempt employees but an employer shall not include a paid pre-retirement leave or allowance to an individual that is not generally available to all exempt employees.

- An employer may expend funds for a retirement or departure gift upon retirement or resignation of a board member or exempt employee. The amount of funds spent should recognize that the gift is a token of appreciation and is not significant enough to be included as an element of total compensation.

## Revisions and Updates

Any revisions to these Compensation and Employment Standards will be subject to the approval of the Public Sector Employers' Council and the Minister of Finance.

These Compensation and Employment Standards, approved by the Public Sector Employers' Council and the Minister of Finance, replace all previous compensation and employment standards.

### **Chronology:**

Approved by BCPSEA Board November 17, 1995  
Approved in Principle by PSEC December 11, 1995  
Amendments Approved by BCPSEA Board June 18, 1999  
Approved by PSEC and the Provincial Government  
Exempt Compensation Sub-Committee October 25, 1999  
Approved by Minister of Finance July 2004  
Approved by Minister of Finance September 6, 2007  
*Public Sector Employers Act* amendments May 2008

# Appendix 1

## Secretary Treasurer Effective July 1, 2009

School District Size (by Student FTE Enrolment)			Base Salary Range			Performance- Based Incentive Plan Maximum
Enrolment Minimum	Enrolment Maximum	Enrolment Mid-point	Minimum	Mid-point	Maximum	
0	2000	1000	\$98,284	\$105,565	\$112,846	\$115,667
2001	6000	4001	100,459	107,993	115,343	118,226
6001	10000	8001	103,358	111,014	118,671	121,637
10001	20000	15001	108,431	116,463	124,494	127,607
20001	30000	25001	115,678	124,246	132,815	136,136
30001	40000	35001	122,924	132,029	141,134	144,663
40001	50000	45001	130,170	139,813	149,456	153,192
50001	60000	55001	137,418	147,597	157,777	161,721
60001	70000	65001	144,665	155,380	166,096	170,249

**Excerpt from Policy 95-06, *Compensation and Employment Standards for School District Employees Not Subject to a Collective Agreement***

## **Appendix 2**

### **Executive Annual Re-earnable Performance-based Incentive Compensation Plan Framework**

#### **Background**

This appendix to Policy 95-06, *Compensation and Employment Standards for School District Employees Not Subject to a Collective Agreement*, describes guidelines for development and administration of Executive Annual Re-earnable Performance-based Incentive Compensation Plans (“Incentive Plan”) that are consistent with industry best practice and the guidelines established for such plans by the Public Sector Employers’ Council.

The Incentive Plan is a new feature in conjunction with the revised salary ranges for the Superintendent and Secretary Treasurer. This approach is fairly widespread for executives in the private sector and is also a feature of executive compensation in the crown corporations sector as well as universities and some colleges. It is, however, new territory for school boards.

In relation to other such plans, the Incentive Plan framework for the K-12 public education sector is a modest first step. The intent is to introduce the concept and guidelines, develop a working model, implement it, and learn from experience.

The objectives of the Incentive Plan are straightforward:

- To effectively communicate organizational strategy
- To align individual and organizational objectives
- To reward results as well as effort
- To provide an opportunity for competitive compensation
- To provide a clear, consistent basis for determining compensation.

The Incentive Plan provides a framework that transforms the organization’s strategic objectives into a coherent set of measurable goals. The goals should reflect individual roles and responsibilities, corporate objectives and business plans, and established individual objectives.

The Incentive Plan clarifies what the individual needs to do in order to influence the amount of their annual re-earnable incentive. It allows individuals to set objectives aligned with overall organizational targets and measure success based on achievement. It will evolve in future years as executives and Boards become more familiar with the identification of objectives and the development of key performance indicators.

The Incentive Plan will create an additional forum to talk about goals, plans, innovation, and achievement. Arguably, the greatest value in the exercise is the dialogue between the

executive and the Board, and the executive and direct reports, at the outset to clarify priorities and objectives. It is critical that the executive participate in the design of the process to ensure that s/he finds it fair and valuable.

## **Recommended Components of Incentive Plans**

While performance-based incentive plans can play an important role in an employer's total rewards approach, the plan should reward appropriate levels of effort. Following are the recommended components of an annual re-earnable performance-based incentive compensation plan.

### ➤ **Plan Governance and Administration**

- The Board of Education should be directly accountable for development and oversight of the executive Incentive Plan. The Board should establish a human resource/compensation committee of the Board to oversee implementation and administration of the plans.
- The BC Public School Employers' Association (BCPSEA) must review and approve any Incentive Plan prior to adoption by the Board. Further, upon approval and adoption of the Incentive Plan, the district must make submission to BCPSEA for approval of any re-earnable payment under the Incentive Plan prior to implementation by the Board.

### ➤ **Overall Incentive Plan Principles**

- The award made under the Incentive Plan must be re-earnable on an annual basis and not guaranteed from year to year.
- The award should be designed to reward superior overall achievement.
- The award, where approved, must be delivered in a lump sum cash payment and is not pensionable.
- The award must be reported as part of total compensation in the year in which it is earned and must be reported as a separate component of the total compensation package (i.e., it cannot be "rolled into" annual base salary for reporting purposes).

### ➤ **Defining Objectives and Performance Measures**

- Organizational strategy must be well communicated to all employees. All objectives must align with the organization's strategic objectives and outline short-term actions that contribute to long-term strategic objectives.
- Objectives should take into consideration the organization's:

- Financial objectives: Measures contribution towards increasing value and achieving strategic goals in financial management.
- Process objectives: Measures contribution towards increasing efficiency, accuracy and productivity.
- People objectives: Tracks ideas and initiatives which have the potential for significant changes in performance levels for both employees and students.
- Client objectives: Measures contribution towards public satisfaction with the delivery of public education in the school district.
- The number of objectives defined should be manageable.
- Performance measures must demonstrate the delivery of clear benefits to the organization. Measurement of objectives should be based upon consideration of the following performance categories:
  - Organization performance
  - Group performance (if applicable)
  - Individual performance.
- Within each category, performance is assessed according to the achievement of the objectives. The achievement of the objectives forms the basis of target performance.
- Target performance must be based on the following principles:
  - Targets must link directly to the Board business plan(s).
  - Targets, particularly for the position of Secretary Treasurer, must include a significant weighting (e.g. 30% to 50%) for financial performance.
  - Targets must be controllable by the employer.
  - Targets must be based on simplicity and transparency (e.g., not too many targets).
  - Targets must include a mix of short-term and longer-term objectives.
- Ensure that the measures used are appropriate for key performance indicators. Where possible, performance measurement should be quantifiable. In many cases, however, performance measurement will be qualitative and, therefore, a subjective determination will have to be made.
- The weightings for each of the performance categories will vary for each executive depending on individual roles and responsibilities. The relative weightings assigned to the performance measures should reflect the individual's ability to impact results; i.e., for executive employees, the emphasis placed on organizational performance should be no less than 70%.

Following is a sample "scorecard":

Issue	Goal/Objective	Measure	Weighting
Issue	Goal/Objective	Measure	Weighting
Issue	Goal/Objective	Measure	Weighting
Issue	Goal/Objective	Measure	Weighting

Note: When evaluating goal achievement, consideration should be given to the following:

The public education sector is subject to external factors that may not be known at the time of development of the goal. Therefore, progress and adaptation of business plan elements are subject to unanticipated changes in the operating environment and emergent issues not anticipated at the time of development. While plans by their nature must be dynamic, consideration will be given to the nature and effect of the external factors on the process.

### ➤ Award Levels

- The Incentive Plan should define three levels of award:
  1. A minimum level of achievement known as a "threshold" level. To merit this award, pre-established objective performance targets (which should incorporate a modest element of "stretch") must be achieved. There should be an 80% - 90% chance of this level being achieved.
  2. A superior or "stretch" level of achievement known as a "target" level. To merit this award, Service or Business Plan targets must be exceeded. There should be a 60% - 80% chance of this level being achieved.
  3. A vastly superior or "super stretch" level of achievement known as a "maximum" award. To merit this award, Service or Business Plan targets must

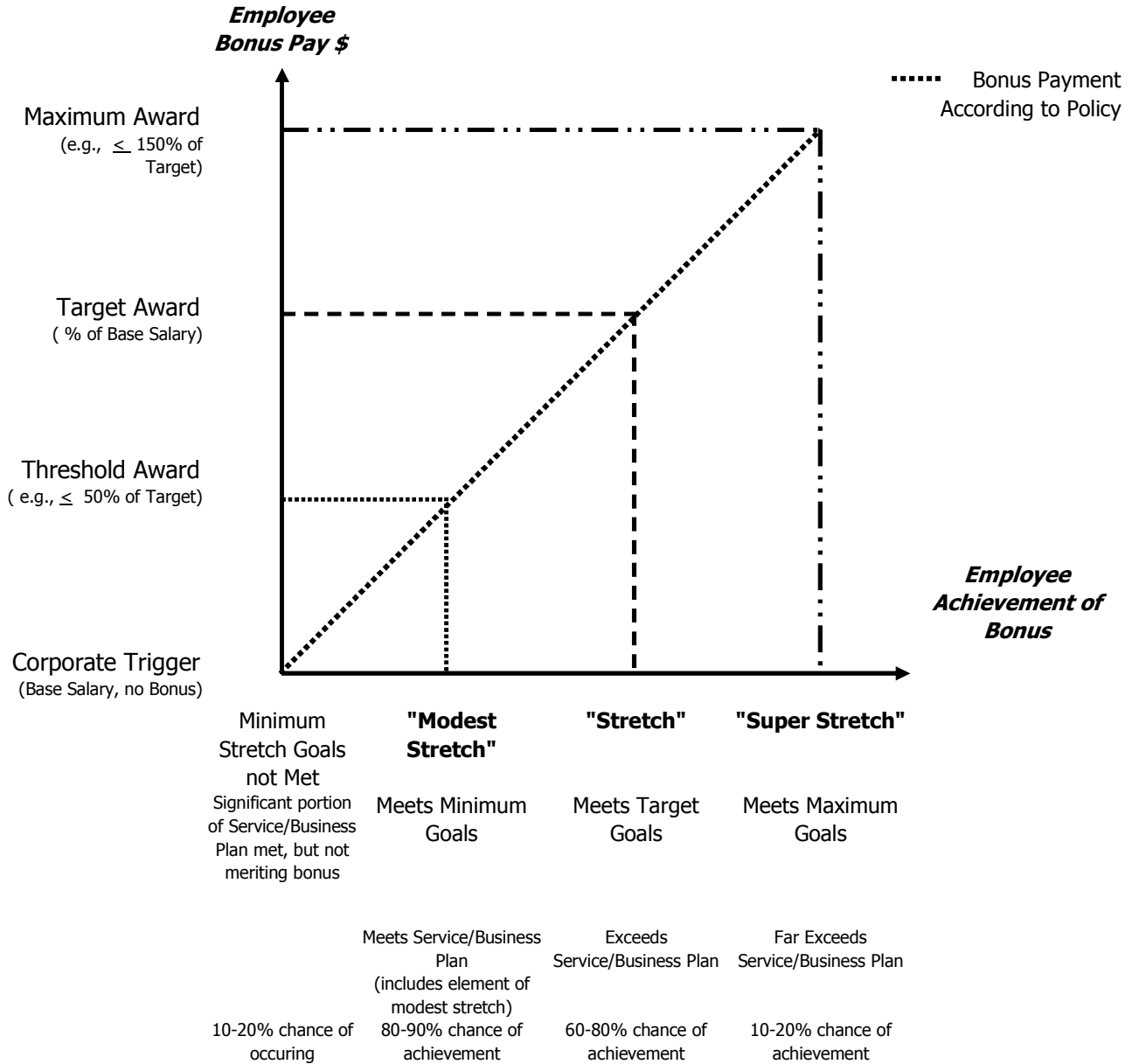


be far exceeded. There should be a 10% - 20% chance of this level being achieved.

- The target award is defined as a percentage of base salary, and the threshold and maximum awards defined as a percentage of the target (e.g., threshold of 50% of target, maximum of 150% of target).
- No bonus should be payable where overall corporate performance does not meet the pre-determined threshold level (i.e., service or business plan targets are not met).

The following schematic demonstrates the award levels and their relationship to performance.

### **Award and Performance Matrix**



➤ **Process Steps**

<b>Step 1</b>	<b>Determine Organizational, Group (if applicable) and Individual Objectives</b>
	As determined by business plan(s) and budget.
<b>Step 2</b>	<b>Develop Scorecard</b>
	Determine weighting allocated to each performance category
	Include organizational, group, and individual objectives and key performance indicators
	Establish individual performance measures
	If the performance category has more than one objective, establish the weighting allocated to each objective
<b>Step 3</b>	<b>Informal Progress Updates</b>
<b>Step 4</b>	<b>Complete and Implement Assessment</b>
	At the end of the fiscal year, assess the performance for each objective on the scorecard
	Determine the award level and pay out the annual incentive earned

➤ **Process Timeline**

<b>Month(s)</b>	<b>Activity</b>
	Business plan(s), budget, and targets are established for the following year
	Preliminary scorecards developed
(First month of fiscal year)	Scorecard weightings and performance measures are finalized
	Annual incentive reviewed and determined
	Performance period for annual incentive commences
	Progress updates
	Business plan(s), budget, and targets are established for next year
	Group and individual components of scorecard are evaluated
	Preliminary scorecards developed for next year
(First month of fiscal year)	Scorecard weightings and performance measures are finalized
	Performance period for annual incentive commences
	Organization component of scorecard developed

Month(s)	Activity
	Scorecard ratings are finalized
	Actual incentive earned for prior year determined and paid.
	Annual incentive for current year reviewed and determined
	Progress updates

➤ **Documentation and Disclosure**

As part of good organizational practice, employers should retain documents describing and justifying payments under the Incentive Plan. Boards of Education have the added obligation under the *Public Sector Employers Act* of obtaining the approval of BCPSEA prior to providing an Incentive Plan award, and of making the Plan documents and other supporting documents available to the public for viewing.

**Getting Started**

Upon review of this framework document, Boards and their executive staff interested in pursuing development of an Incentive Plan may wish to contact Deborah Stewart, Senior Human Resources Consultant (604.730.4506, [deborahs@bcpsea.bc.ca](mailto:deborahs@bcpsea.bc.ca)), for discussion and assistance in developing and implementing an Incentive Plan for use in the district.

## Appendix 3

### Leased Vehicle Policy K-12 Public Education Sector

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#### BACKGROUND

The Public Sector Employers' Council has proposed that the use of leased vehicles by management staff be governed by a publicly defensible policy. The British Columbia Public School Employers' Association believes that the challenges for district staff of managing a multi-site workplace require a policy tailored specifically to the K-12 sector. A working group was struck to come up with a leased vehicle policy which meets the following objectives:

- Ensure that vehicle leases, when utilized, are a cost effective transportation solution for the school district.
- Ensure that Revenue Canada and *Canada Tax Code* rules are complied with.
- Ensure that the use of leased vehicles is proper and responsible according to perceptions held by the majority of taxpayers of British Columbia.

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#### POLICY GUIDELINES

1. The policy guidelines apply to leased vehicles where the cost of the vehicle lease exceeds the cost of paying mileage to that employee. In these cases, the lease is defined as forming part of the employee's total compensation (even though there are times when the vehicle is used for school district purposes).
2. Leased vehicles may only be provided as part of total compensation to superintendents, secretary-treasurers, assistant superintendents or equivalent positions.
3. The type of vehicle leased must not exceed that necessary to perform the required duties of the position.
4. The lease must be structured to be the most cost effective for the school district and ensure that any residual benefit accrues to the school district and not to the employee.
5. Tender specifications must be publicly defensible.

## Appendix 4

2002 Legislative Session: 3rd Session, 37th Parliament  
THIRD READING

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The following electronic version is for informational purposes only.  
The printed version remains the official version.

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Certified correct as passed Third Reading on the 29th day of October, 2002  
Ian D. Izard, Law Clerk

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HONOURABLE GRAHAM BRUCE  
MINISTER OF SKILLS DEVELOPMENT AND LABOUR

### BILL 66 -- 2002

#### PUBLIC SECTOR EMPLOYERS AMENDMENT ACT, 2002

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

*1 Section 1 of the Public Sector Employers Act, R.S.B.C. 1996, c. 384, is amended*

*(a) by adding the following definition:*

**"employment compensation standard"** means a standard established under section 14.2 or 14.3 (5); , *and*

*(b) by repealing the definitions of "employment termination standard" and "public sector employee" and substituting the following:*

**"employment termination standard"** means a standard established under section 14.4;

**"public sector employee"** means a person employed by, or appointed to an office with, a public sector employer, but does not include a justice or a person appointed as a justice; .

*2 Sections 4.1 and 4.2 are repealed and the following substituted:*

#### Council access to employment information

**4.1** A public sector employer must provide, without charge, to the council copies of contracts of employment and other information that the council requests for the purpose of monitoring compliance with employment compensation standards and employment termination standards.

*3 Section 5 (1) is amended by striking out "officers" and substituting "a chief executive officer and other officers".*

*4 Section 7 (1) is amended*

*(a) by repealing paragraph (c.2) (i) and (ii) and substituting the following:*

(i) as if it were a public sector employer, with any employment compensation standard or employment termination standard that is of general application, or

(ii) with any employment compensation standard that the minister may establish, under section 14.3, specifically for those persons or that association; , *and*

*(b) by repealing paragraph (c.3) (ii) and substituting the following:*

(ii) other information that the council requests for the purpose of monitoring compliance with paragraph (c.2); .

*5 The following Part is added:*

### **Part 3.1 -- Exempt Employee Compensation**

#### **Division 1 -- Definitions**

##### **Definitions**

**14.1** In this Part:

**"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 other benefit;

**"effective date"** means the date on which the *Public Sector Employers Amendment Act, 2002* receives first reading in the Legislative Assembly;

**"employee"** means a public sector employee who is excluded from membership in a bargaining unit.

## Division 2 -- Employment Compensation Standards

### Vacation leave and sick leave standards

**14.2** (1) Except as provided under subsection (2), an employee is not entitled to

(a) bank, accumulate or carry forward to subsequent employment years any unused vacation leave benefits attributable to any previous employment year, or

(b) be paid out for unused vacation leave for an employment year.

(2) An employee who has unused vacation days for an employment year may, to the extent that the contract of employment allows the carrying forward of unused vacation days,

(a) be paid out for the unused vacation days in the form of a lump sum cash payment in the employment year immediately following the employment year for which the unused vacation leave is attributable,

(b) carry forward the unused vacation days and use them for vacation leave in the employment year immediately following the employment year for which the unused vacation leave is attributable, or

(c) in the employment year immediately following the employment year for which the unused vacation leave is attributable, in part, be paid out under paragraph (a) and, in part, carry forward unused vacation days and use them for vacation leave under paragraph (b).

(3) In respect of sick leave benefits that allow an employee to bank, accumulate or carry forward unused sick days for an employment year, the employee is not entitled to be paid out for any unused sick day in the form of

(a) additional vacation leave, or

(b) a cash payment or any other benefit, other than sick leave.

(4) Subsections (1) to (3) do not apply in relation to an employee's vacation leave benefits or sick leave benefits banked or accumulated on or before December 31, 2002.

(5) The provisions of this section

(a) are deemed to be employment compensation standards for the purposes of this Act, and



(b) are deemed to be included in employees' contracts of employment that are in force on January 1, 2003 or are commenced, changed or renewed on or after that date.

(6) Effective January 1, 2003, any provision of a contract of employment referred to in subsection (5) (b) that conflicts or is inconsistent with an employment compensation standard established by this section is void to the extent of the conflict or inconsistency.

#### **Other compensation standards**

**14.3** (1) The minister may direct an employers' association or a public sector employer to prepare

(a) one or more compensation plans respecting compensation that will be provided to

(i) employees in the sector or within the employ of the public sector employer, or

(ii) persons employed by the employers' association and who are not subject to a collective agreement, and

(b) a report in respect of each compensation plan required under paragraph (a) describing, in accordance with the minister's directions,

(i) the methodology used in devising the plan, and

(ii) how the employers' association or public sector employer intends to implement and monitor the compensation plan.

(2) The minister may do one or more of the following for the purposes of a direction issued under subsection (1):

(a) make the direction specific to one or more employees or persons referred to in subsection (1) (a) and, for this purpose, may specify a position or an occupation or categories of positions or occupations;

(b) prescribe information that must be included in a compensation plan;

(c) without limiting paragraph (b), require that the employers' association or public sector employer include in the plan

(i) a detailed description of the nature, amount and range of compensation that will be provided to the employees or persons in respect of whom the plan applies, and

- (ii) any other information the minister considers appropriate;
  - (d) prescribe information that must be included in a report referred to in subsection (1) (b);
  - (e) without limiting paragraph (d), require that the employers' association or public sector employer include in the report
    - (i) comparisons of actual compensation provided to persons employed in the same or a similar sector, position or occupation, whether those persons are employed in the public sector or the private sector, as considered appropriate by the minister, and
    - (ii) any other information the minister considers appropriate;
  - (f) specify the form and manner in which a compensation plan and the report in respect of it are to be prepared and submitted for review by the minister.
- (3) The minister may issue different directions under subsection (1) for different employers' associations, public sector employers, public sector employees or persons referred to in paragraph (a) of that subsection.
- (4) If directed to prepare a compensation plan and report under this section, the employers' association or public sector employer in respect of whom the direction is issued must, in accordance with the minister's direction,
- (a) prepare the plan and report, and
  - (b) submit them for review by the minister.
- (5) If, following a review of a compensation plan, the plan is approved by the minister, that compensation plan is adopted as an employment compensation standard on that approval.
- (6) On the minister issuing a direction to an employers' association or a public sector employer under subsection (1), no increase in compensation may be provided to employees or persons in positions or occupations in respect of which the direction is issued unless
- (a) a compensation plan in respect of those employees or persons is approved by the minister and the increase in compensation is consistent with the applicable employment compensation standard resulting from the operation of subsection (5),

(b) the increase in compensation was agreed to before the date on which the minister issues the direction and the increase in compensation is consistent with the applicable employment compensation standard, if any, that was in force and effect before the issuance of the direction,

(c) the increase is the result of a change in an employee's or person's position within a range of positions that was established for the sector, employee or person before the issuance of the direction, or

(d) the increase is within a range of compensation that was established for the employee's or person's position before the issuance of the direction.

### **Division 3 -- Employment Termination Standards**

#### **Employment termination standards**

**14.4** (1) The Lieutenant Governor in Council may, by regulation, establish employment termination standards for an employee.

(2) In making regulations under subsection (1), the Lieutenant Governor in Council may do one or more of the following:

(a) delegate a matter to the council, the Treasury Board, an employers' association, a public sector employer or the minister;

(b) confer a discretion on the council, the Treasury Board, an employers' association, a public sector employer or the minister;

(c) establish different standards for different public sector employers or public sector employees;

(d) specify positions or occupations or categories of positions or occupations for the purpose of paragraph (c).

(3) If the Lieutenant Governor in Council establishes an employment termination standard by regulation under subsection (1), effective on the date on which the regulation comes into force,

(a) the standard is deemed to be included in all applicable contracts of employment that are commenced, changed or renewed on or after that date, and

(b) any provision of an applicable contract of employment referred to in paragraph (a) that conflicts or is inconsistent with the standard is void to the extent of the conflict or inconsistency.

(4) The Employment Termination Standards regulation (B.C. Reg. 379/97) made under this Act before the commencement of this section continues, as amended by this section, and is deemed to have been made under this section.

(5) On the effective date,

(a) the Employment Termination Standards regulation (B.C. Reg. 379/97) is deemed to have been amended as set out in the Schedule to the *Public Sector Employers Amendment Act, 2002*,

(b) the employment termination standards set out in that regulation are deemed to be included in all applicable contracts of employment that are in force on the effective date or are commenced, changed or renewed on or after that date, and

(c) any provision of an applicable contract of employment referred to in paragraph (b) that conflicts or is inconsistent with any of those standards is void to the extent of the conflict or inconsistency.

(6) Subsection (5) is retroactive to the extent necessary to give it force and effect on and after the effective date.

(7) The amendment to section 5 (2) of the Employment Termination Standards regulation (B.C. Reg. 379/97) made under this section does not apply in relation to an employee with whom a contract of employment was entered into before the effective date and which contract of employment is for a definite term unless that contract of employment is changed or renewed on or after the effective date.

#### **Division 4 -- Compensation Information**

##### **Definition and application**

**14.5** (1) In this Division, "**senior employee**" means an employee who

(a) earns a base salary above a prescribed amount, and

(b) is not employed in a prescribed position or occupation or category of positions or occupations that may be excluded from the application of this Division.

(2) For the purpose of the definition of "senior employee", the Lieutenant Governor in Council may make regulations

(a) prescribing an amount for the purpose of paragraph (a) of that definition, and

(b) prescribing positions or occupations or categories of positions or occupations for the purpose of paragraph (b) of that definition.

(3) This Division applies to a senior employee's contract of employment that is in force on the effective date or entered into on or after that date.

#### **Compensation information to be specified and provided**

**14.6** (1) For each senior employee, a public sector employer must provide for the chief executive officer of the council a report specifying all the terms and conditions of employment relating to the senior employee's compensation.

(2) If any change is made to the terms and conditions of employment relating to a senior employee's compensation, the public sector employer must provide for the chief executive officer of the council a revised report specifying each change made to those terms and conditions.

(3) The terms and conditions referred to in subsection (1) and any changes to them must be specified and provided in a form and in a manner acceptable to the chief executive officer of the council.

#### **Filing of contracts of employment and compensation information**

**14.7** (1) A public sector employer must file with the chief executive officer of the council a report required to be provided in relation to a senior employee under section 14.6 together with a copy of the written contract of employment, if any, for the senior employee

(a) within 15 days after the contract of employment is entered into, and

(b) within 15 days of any change to a term or condition of the senior employee's contract of employment that relates to compensation.

(2) In the case of a contract of employment entered into before this section comes into force, the public sector employer must file the report and copy described in subsection (1) with the chief executive officer of the council before March 31, 2003.

(3) A public sector employer must provide the chief executive officer of the council with any information the chief executive officer of the council may require to be satisfied that a copy of a written contract of employment is a true copy or that the report described in subsection (1) or (2) includes complete and accurate information regarding the terms and conditions of employment.

(4) If a public sector employer fails to comply with subsection (1), (2) or (3), the minister may declare all or part of the contract of employment to be void and on that declaration the contract of employment or part of it, as the case may be, is deemed to be void.

#### **Contracts of employment are public documents**

**14.8** (1) A provision of a contract of employment that all or part of the contract is to remain confidential is void.

(2) Each senior employee's contract of employment is deemed to include a provision that the contract is a public document and the public sector employer must make the contract, together with any report filed with the chief executive officer of the council in relation to it, available for public inspection in accordance with this section.

(3) A public sector employer must make available for public inspection during normal business hours information in contracts of employment and reports referred to in subsection (2) that would otherwise be available to an applicant making a request under the *Freedom of Information and Protection of Privacy Act*.

### **Division 5 -- Tribunal Exclusions**

#### **Members of tribunals**

**14.9** (1) This Part does not apply to

- (a) a coroner under the *Coroners Act*,
- (b) the fire commissioner under the *Fire Services Act*,
- (c) an arbitrator under the *Residential Tenancy Act*,
- (d) a governor or director of the Workers' Compensation Board under the *Workers Compensation Act*, or
- (e) a person who is a member of a tribunal designated in the Schedule, when the person is acting in his or her capacity as a member of the tribunal.

(2) The Lieutenant Governor in Council may, by regulation, add a tribunal to the Schedule.

#### **6 Section 15.1 is repealed and the following substituted:**

##### **Compliance with Part 3.1**

**15.1** (1) If, after the effective date of Part 3.1, a person accepts money or receives a benefit from a public sector employer that exceeds the amount or benefit permitted by that Part or by a regulation under that Part, the excess money or cost to the employer of the benefit is a debt that is payable to the government by the person who receives the amount or benefit.

(2) Subsection (1) does not apply if the public sector employer referred to in that subsection recovers the excess money or cost within

(a) the year after the date on which the person accepts the money or receives the benefit that exceeds the amount or benefit permitted by Part 3.1 or by a regulation under that Part, or

(b) a longer period specified by the minister.

**7 The following Schedule is added:**

### **Schedule**

#### **Designated Tribunals**

*(section 14.9)*

Appeal Board (*Motion Picture Act*)

Appeal Division (*Workers Compensation Act*)

BC Benefits Appeal Board

British Columbia Marketing Board (*Natural Products Marketing (BC) Act*)

British Columbia Securities Commission

British Columbia Utilities Commission

Board of Parole (*Parole Act*)

Building Code Appeal Board (*Local Government Act*)

Commercial Appeals Commission

Community Care Facility Appeal Board

Employment and Assistance Appeal Tribunal (*Employment and Assistance Act*)

Employment Standards Tribunal

Environmental Appeal Board

Expropriation Compensation Board

Farm Practices Board

Financial Institutions Commission

Forest Appeals Commission

Forest Practices Board

Health Care and Care Facility Review Board

Health Care Practitioners Special Committee for Audit (*Medicare Protection Act*)

Hospital Appeal Board (*Hospital Act*)

Human Rights Tribunal

Labour Relations Board

Land Reserve Commission

Mediation and Arbitration Board (*Petroleum and Natural Gas Act*)

Medical and Health Care Services Appeal Board

Medical Review Panel (*Workers Compensation Act*)

Medical Services Commission (*Medicare Protection Act*)

Mineral Tax Review Board

Motor Carrier Commission

Private Post-Secondary Education Commission

Property Assessment Appeal Board

Property Assessment Review Panels

Public Service Appeal Board

Review Board (*Criminal Code*)

Review Panel (*Mental Health Act*)

Workers' Compensation Review Board .

## **Consequential Amendment**



### *Hydro and Power Authority Act*

*8 Section 32 (7) of the Hydro and Power Authority Act, R.S.B.C. 1996, c. 212, is amended by adding the following paragraph:*

(v.1) the *Public Sector Employers Act*; .

### **Transitional Provision**

#### **Transitional -- no action for damages**

**9** No action for damages or compensation may be brought against the government or any person because of this Act, the amendments made by this Act to the *Public Sector Employers Act* or a regulation continued or enacted under the *Public Sector Employers Act* by this Act.

### **Schedule**

*(Public Sector Employers Amendment Act, 2002)*

*1 Section 1 of the Employment Termination Standards, B.C. Reg. 379/97, is amended*

*(a) by adding the following definitions:*

"**Act**" means the *Public Sector Employers Act*;

"**retiring allowance**" means a payment that, by a contract of employment, an employee may receive on or after retirement of the employee from his or her employment in recognition of the employee's service, but does not include the following:

- (a) superannuation or a pension benefit;
- (b) an amount received as a consequence of the death of the employee;
- (c) a benefit designated by the minister; , *and*

*(b) by repealing the definition of "employee" and substituting the following:*

"**employee**" has the same meaning as in section 14.1 of the Act; .

*2 Section 2 is amended*

*(a) in subsection (1) (b) by striking out "an employment contract" and substituting "a contract of employment",*

*(b) in subsection (2) by striking out "a labour adjustment policy or program approved by the council." and substituting "a labour adjustment policy or program approved by the minister.", and*

*(c) by adding the following subsection:*

(3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of subsection (2).

**3 The following section is added:**

**Limitation on retiring allowance**

**2.1** (1) An employee who receives a notice period or severance must not be given a retiring allowance.

(2) Subsection (1) does not prevent an employer from providing a retiring allowance under a labour adjustment policy or program approved by the minister.

(3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of subsection (2).

**4 Section 5 is amended**

*(a) in subsection (1) (a) by striking out "an employment termination plan for the employee that has been approved by the council;" and substituting "an employment termination plan for the employee that has been approved by the minister;"*,

*(b) by adding the following subsection:*

(1.1) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the minister for the purposes of subsection (1). , *and*

*(c) in subsection (2) by striking out "24 months." and substituting "18 months."*

**5 The following section is added:**

**Executive notice and severance**

**5.1** (1) In addition to the limits imposed under section 5, this section applies in relation to employees of a public sector employer, other than an employer referred to in paragraph (g) of the definition of "public sector employer" in section 1 of the Act, who are appointed to or employed in the following positions:

- (a) deputy minister;
- (b) chief executive officer or president of a public sector employer;
- (c) superintendent of a school.

(2) The notice period or severance that may be given to an employee in a position referred to in subsection (1) must not exceed

- (a) an amount calculated according to an employment termination plan for the employee that has been approved by the Treasury Board, or
- (b) if no employment termination plan has been approved by the Treasury Board, the following limits:

- (i) up to a 6 month notice period or severance, if the employee has served or been employed in that position for fewer than 12 months;
- (ii) up to a 9 month notice period or severance, if the employee has served or been employed in that position for 12 to 17 months;
- (iii) up to a 12 month notice period or severance, if the employee has served or been employed in that position for 18 to 35 months;
- (iv) up to a 14 month notice period or severance, if the employee has served or been employed in that position for 36 to 47 months;
- (v) up to a 16 month notice period or severance, if the employee has served or been employed in that position for 48 to 59 months;
- (vi) up to an 18 month notice period or severance, if the employee has served or been employed in that position for 60 or more months.

(3) Treasury Board may not approve an employment termination plan under subsection (2) (a) that would provide an employee more than a 12 month notice period or severance for fewer than 18 months of service or employment.

(4) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the Treasury Board for the purposes of subsection (2).

*6 Section 7 is amended by striking out* "If an employee is employed under an employment contract for a fixed term the employment contract must" *and substituting* "If an employee is employed under a contract of employment for a definite term the contract must".

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## Appendix 5

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[Important Information](#) (disclaimer and copyright information)

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B.C. Reg. 379/97  
O.C. 1266/97

Deposited November 18, 1997  
effective May 1, 1997

### *Public Sector Employers Act*

The Employment Termination Standards established by the Public Sector Employers Council are adopted as employment termination standards for the purposes of section 14.4 of the *Public Sector Employers Act*.

## EMPLOYMENT TERMINATION STANDARDS

[includes amendments up to those made by 2002-64-Sch.]

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### Definitions

**1** In these standards:

"**Act**" means the *Public Sector Employers Act*;

"**employee**" has the same meaning as in section 14.1 of the Act;

**"notice of termination"** means notification by a public sector employer to an employee that his or her contract of employment will be terminated;

**"notice period"** means the length of time from the date on which notice of termination is given to an employee until the date on which employment will terminate;

**"retiring allowance"** means a payment that, by a contract of employment, an employee may receive on or after retirement of the employee from his or her employment in recognition of the employee's service, but does not include the following:

- (a) superannuation or a pension benefit;
- (b) an amount received as a consequence of the death of the employee;
- (c) a benefit designated by the minister;

**"severance"** means the severance payment made in lieu of the notice period;

**"successor employer"** means a purchaser, lessee or transferee referred to in section 35 of the *Labour Relations Code*.

[am. 2002-64-Sch, s. 1.]

#### **Limitation on notice period and severance**

2 (1) An employee must not be given a notice period or severance in the case of

- (a) termination for cause,
- (b) expiry of a contract of employment with a definite term, or
- (c) voluntary resignation or retirement.

(2) Subsection (1) does not prevent an employer from providing severance under a labour adjustment policy or program approved by the minister.

(3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of subsection (2).

[am. 2002-64-Sch, s. 2.]

#### **Limitation on retiring allowance**

**2.1** (1) An employee who receives a notice period or severance must not be given a retiring allowance.

(2) Subsection (1) does not prevent an employer from providing a retiring allowance under a labour adjustment policy or program approved by the minister.

(3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of subsection (2).

[en. 2002-64-Sch, s. 3.]

#### **Duties of employee during notice period**

**3** (1) During the notice period, a public sector employer, in its sole discretion, may

(a) require the employee to continue with his or her duties, assignment, tasks or projects,

(b) assign the employee to other duties, assignments, tasks or projects with the same or a successor employer, notwithstanding that the assignment may amount to a constructive dismissal, if

(i) the assignment is reasonably consistent with the employee's ability and responsibility at the time of the assignment, and

(ii) the employee is not required to relocate unreasonably,

(c) assign the employee to a non-successor employer with the agreement of the employee, or

(d) excuse the employee from performing his or her duties.

(2) If an employee refuses to perform duties assigned by the employer in accordance with this section, the employee is deemed to have voluntarily resigned and is not entitled to a continuation of the notice period or any payment in lieu of the notice period.

#### **Severance payment instead of notice**

4 (1) If an employer terminates employment without cause and excuses the employee from performing his or her duties under section 3 (1) (d), the employer, in its sole discretion, may provide the employee with severance.

(2) Severance must be in the form of periodic payments unless the employer, in its sole discretion, considers a lump sum payment to be more appropriate.

#### **Amount of notice and severance**

5 (1) A notice period or severance must not exceed the following:

(a) an amount calculated according to an employment termination plan for the employee that has been approved by the minister;

(b) if no employment termination plan has been approved by the council, the lesser of

(i) an amount equal to the remaining term of the contract, or

(ii) an amount provided under common law calculated as though the employee were subject to an indefinite term agreement with no provision regarding severance.

(1.1) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the minister for the purposes of subsection (1).

(2) Despite subsection (1), the maximum notice period that an employee may be given is 18 months.

(3) Despite subsection (1), the maximum severance that an employee may be given is the value of salary and benefits the employee would otherwise be entitled to for the notice period.

[am. 2002-64-Sch, s. 4.]

#### **Executive notice and severance**

5.1 (1) In addition to the limits imposed under section 5, this section applies in relation to



employees of a public sector employer, other than an employer referred to in paragraph (g) of the definition of "public sector employer" in section 1 of the Act, who are appointed to or employed in the following positions:

- (a) deputy minister;
- (b) chief executive officer or president of a public sector employer;
- (c) superintendent of a school.

(2) The notice period or severance that may be given to an employee in a position referred to in subsection (1) must not exceed

(a) an amount calculated according to an employment termination plan for the employee that has been approved by the Treasury Board, or

(b) if no employment termination plan has been approved by the Treasury Board, the following limits:

- (i) up to a 6 month notice period or severance, if the employee has served or been employed in that position for fewer than 12 months;
- (ii) up to a 9 month notice period or severance, if the employee has served or been employed in that position for 12 to 17 months;
- (iii) up to a 12 month notice period or severance, if the employee has served or been employed in that position for 18 to 35 months;
- (iv) up to a 14 month notice period or severance, if the employee has served or been employed in that position for 36 to 47 months;
- (v) up to a 16 month notice period or severance, if the employee has served or been employed in that position for 48 to 59 months;
- (vi) up to an 18 month notice period or severance, if the employee has served or been employed in that position for 60 or more months.

(3) Treasury Board may not approve an employment termination plan under subsection (2) (a) that would provide an employee more than a 12 month notice period or severance for fewer than 18 months of service or employment.

(4) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the Treasury Board for the purposes of subsection (2).

[en. 2002-64-Sch, s. 5.]

#### **Re-employment in the public sector**

**6** (1) In this section, "**re-employment**" includes entering into a contract for services with a public sector employer either individually or through a sole proprietorship, partnership or corporation.

(2) An employee must notify the employer of any re-employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided.

(3) If an employee commences employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided,

(a) no severance covering this period of re-employment is payable, and

(b) the employee must pay the government any amount that is attributable to the period during which the employee is re-employed.

(4) During the notice period or period in lieu of which severance is provided, if an employee is re-employed at a lower level of compensation, nothing in this section prevents an employer from providing to the employee an amount equivalent to the difference between their former compensation level and their compensation level upon re-employment.

#### **Term of employment contracts**

**7** If an employee is employed under a contract of employment for a definite term the contract must

(a) subject to paragraph (b), be for a term of not more than 5 years, and

(b) if employment under the contract may be extended for more than 5 years, make the extension conditional on a renegotiation of the contract during the term of the contract.

[en. 2002-64-Sch, s. 6.]

Provisions of the *Public Sector Employers Act*, R.S.B.C. 1996, c. 384, relevant to the enactment of this regulation: section 14.4]

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