

ONTARIO REGULATION 12/13

made under the

PUTTING STUDENTS FIRST ACT, 2012

Amending O. Reg. 2/13

(GENERAL)

Note: Ontario Regulation 2/13 has not previously been amended.

1. (1) Subsection 2 (2) Ontario Regulation 2/13 is amended by adding the following paragraph:

- 5.1 For a retirement gratuity in the form of a contribution to a registered retirement savings plan, the employee shall give the board written particulars of the financial institution and the account into which the gratuity is to be paid. The board shall make the payment into the account no later than December 31, 2013.

(2) Paragraph 6 of subsection 2 (2) of the Regulation is revoked and the following substituted:

6. If, as of August 31, 2012, the employee has accumulated a retirement gratuity (other than one in the form of an early retirement incentive plan or a contribution to a registered retirement savings plan) but if the employee is not eligible to receive the retirement gratuity for the sole reason that he or she has not satisfied an eligibility requirement relating to the number of years of his or her service as an employee with the board, the employee is eligible to receive, by June 30, 2013, the following amount for gratuity wind-up:
- i. If the employment contract that was in effect on August 31, 2012 or a board policy that was in effect on that date provided for a payment for such a retirement gratuity, the amount that is the lesser of,
 - A. the amount of the payment that would be provided under the employment contract or board policy, calculated using the number of years of his or her service as an employee with the board as of August 31, 2012 and, if the retirement gratuity is in the form of sick leave credits, using the number of days of sick leave credits accumulated by the employee as of August 31, 2012, and
 - B. the amount calculated using the formula in subparagraph ii.

- ii. In any other case, the amount calculated using the formula,

$$(X/30) \times (Y/200) \times (Z/10)$$

in which,

“X” is the number of years of his or her service as an employee with the board as of August 31, 2012,

“Y” is the lesser of 200 and the number of days of sick leave credits accumulated by the employee as of August 31, 2012, and

“Z” is the employee’s salary as of August 31, 2012.

(3) Subparagraph 9 i of subsection 2 (2) of the Regulation is revoked and the following substituted:

- i. The employee is only entitled to maternity benefits if at least one of the following conditions is satisfied:
- A. The employee is in a class of employees that, on August 31, 2012, was entitled to accumulate unused sick leave credits.
 - B. The employee is filling a long-term assignment

(4) Paragraph 9 of subsection 2 (2) of the Regulation is amended by adding the following subparagraph:

- iii.1 Despite subparagraph ii, an employee who is filling a long-term assignment is not entitled to be paid for maternity benefits after the last day of the long-term assignment.

(5) Subparagraph 10 iii of subsection 2 (2) of the Regulation is revoked and the following substituted:

- iii. The top-up amount shall be paid at a rate determined in accordance with the contract of employment in effect on August 31, 2012 or, if the contract did not provide for the top up, in accordance with a board policy in effect on August 31, 2012.

(6) Paragraph 2 of subsection 2 (3) of the Regulation is amended by striking out “on the 97th school day after that day” at the end and substituting “on the 97th school day of the school year”.

(7) Paragraphs 2, 3 and 4 of subsection 2 (4) of the Regulation are revoked and the following substituted:

2. The following rules apply if, during a fiscal year, the employee's period of employment is the same as the school year:
 - i. If the contract provides for movement on the salary grid on the first school day of the school year, the movement will occur on the 97th school day of the school year.
 - ii. If the contract provides for movement on the salary grid on the anniversary of the first day the employee was employed by the board, the movement will occur on the 97th school day after that day.
 - iii. If the contract provides for movement on the salary grid on a day (the "designated day") other than the first school day of the school year or the first anniversary of the first day the employee was employed by the board, the movement will occur on the 97th school day after that designated day.
 - iv. If the contract provides for movement more than once in a fiscal year, the movement will occur on the day determined under paragraph 5.
3. The following rules apply if, during a fiscal year, the employee's period of employment is not the same as the school year:
 - i. Postponement period: For the purposes of subparagraphs ii, iii and iv, the employee's postponement period is the number of days that is calculated by dividing by two the number of days in the employee's period of employment during the fiscal year. If this calculation results in a number that includes a fraction of a day, increase this number of days to the next highest whole number.
 - ii. If the contract provides for movement on the salary grid on the first school day of the school year, the movement will occur on the day after the postponement period expires. For the purposes of this subparagraph, the postponement period commences on the first school day of the school year.
 - iii. If the contract provides for movement on the salary grid on the anniversary of the first day the employee was employed by the board, the movement will occur on the day after the postponement period expires. For the purposes of this subparagraph, the postponement period commences on the anniversary of the first day the employee was employed by the board.

- iv. If the contract provides for movement on the salary grid on a day (the “designated day”) other than the first school day of the school year or the anniversary of the first day the employee was employed by the board, the movement will occur on the day after the postponement period expires. For the purposes of this subparagraph, the postponement period commences on the designated day.
- v. If the contract provides for movement more than once in a fiscal year, the movement will occur on the day determined under paragraph 5.

(8) Paragraph 5 of subsection 2 (4) of the Regulation is amended by striking out “paragraphs 2 to 4 do not apply and instead each movement will occur” in the portion before the formula and substituting “each movement will occur”.

(9) Subsection 2 (4) of the Regulation is amended by adding the following paragraph:

- 6. On the last day of the restraint period, the employee shall be paid the amount, if any, determined in accordance with the following rules:
 - i. Actual salary increase during restraint period: Calculate the amount by which the employee’s salary, at the end of the restraint period, had increased as a result of his or her movement on the salary grid during the restraint period.
 - ii. Potential salary increase: Calculate the amount by which the employee’s salary, at the end of the restraint period, would have increased as a result of his or her movement on the salary grid during the restraint period, determined as if paragraphs 2, 3 and 5 did not apply in the circumstances.
 - iii. Difference: Subtract the actual salary increase calculated under subparagraph i from the potential salary increase calculated under subparagraph ii, and express the resulting amount as a percentage of the potential salary increase.
 - iv. Amount of payment: If the percentage calculated under subparagraph iii is greater than 50 per cent, the amount payable to the employee under this paragraph is calculated using the formula,

$$(C - D) \times E$$

in which,

“C” is the percentage calculated under subparagraph iii,

“D” is 50 per cent, and

“E” is the amount of the potential salary increase calculated under subparagraph ii.

- v. No payment: If the percentage calculated under subparagraph iii is 50 per cent or less, no amount is payable to the employee under this paragraph.

2. (1) Subsection 3 (1) of the Regulation is amended by adding the following paragraph:

- 5.1 For a retirement gratuity in the form of a contribution to a registered retirement savings plan, the employee shall give the board written particulars of the financial institution and the account into which the gratuity is to be paid. The board shall make the payment into the account no later than December 31, 2013.

(2) Paragraph 6 of subsection 3 (1) of the Regulation is revoked and the following substituted:

- 6. If, as of August 31, 2012, the employee has accumulated a retirement gratuity (other than one in the form of an early retirement incentive plan or a contribution to a registered retirement savings plan) but if the employee is not eligible to receive the retirement gratuity for the sole reason that he or she has not satisfied an eligibility requirement relating to the number of years of his or her service as an employee with the board, the employee is eligible to receive, by June 30, 2013, the following amount for gratuity wind-up:
 - i. If the collective agreement that was in effect on August 31, 2012 or a board policy that was in effect on that date provided for a payment for such a retirement gratuity, the amount that is the lesser of,
 - A. the amount of the payment that would be provided under the collective agreement or board policy, calculated using the number of years of his or her service as an employee with the board as of August 31, 2012 and, if the retirement gratuity is in the form of sick leave credits, using the number of days of sick leave credits accumulated by the employee as of August 31, 2012, and
 - B. the amount calculated using the formula in subparagraph ii.
 - ii. In any other case, the amount calculated using the formula,

$$(X/30) \times (Y/200) \times (Z/10)$$

in which,

“X” is the number of years of his or her service as an employee with the board as of August 31, 2012,

“Y” is the lesser of 200 and the number of days of sick leave credits accumulated by the employee as of August 31, 2012, and

“Z” is the employee’s salary as of August 31, 2012.

(3) Subparagraph 7 i of subsection 3 (1) of the Regulation is revoked and the following substituted:

- i. The employee is only entitled to maternity benefits if at least one of the following conditions is satisfied:
 - A. The employee is in a class of employees that, on August 31, 2012, was entitled to accumulate unused sick leave credits.
 - B. The employee is filling a long-term assignment

(4) Subparagraph 7 iv of subsection 3 (1) of the Regulation is amended by striking out “an employee who is a teacher” and substituting “an employee”.

(5) Subparagraph 8 iii of subsection 3 (1) of the Regulation is revoked and the following substituted:

- iii. The top-up amount shall be paid at a rate determined in accordance with the collective agreement in effect on August 31, 2012 or, if the collective agreement did not provide for the top up, in accordance with a board policy in effect on August 31, 2012.

(6) Subsection 3 (1) of the Regulation is amended by adding the following paragraph:

- 10. While the collective agreement is in effect, neither the board nor the employee bargaining agent can ask, or permit, an arbitrator or arbitration board to do any of the following things:
 - i. To inquire into or make a decision on whether a provision of the Act, a regulation or an order made under subsection 9 (2) of the Act is constitutionally valid.
 - ii. To question or review terms and conditions included in the collective agreement under or by virtue of the Act, except as provided by those terms or conditions.

However, for greater certainty, these restrictions do not affect the capacity of the board or the employee bargaining agent to bring or maintain a proceeding before a court in respect of those matters.

(7) Paragraphs 2, 3, 4 and 5 of subsection 3 (2) of the Regulation are revoked and the following substituted:

2. The following rules apply if, during a fiscal year, the employee's period of employment is the same as the school year:
 - i. If the collective agreement provides for movement on the salary grid on the first school day of the school year, the movement will occur on the 97th school day of the school year.
 - ii. If the collective agreement provides for movement on the salary grid on the anniversary of the first day the employee was employed by the board, the movement will occur on the 97th school day after that day.
 - iii. If the collective agreement provides for movement on the salary grid when the employee earns additional qualifications, the movement will occur on the 97th school day after the day specified in the collective agreement for that purpose.
 - iv. If the collective agreement provides for movement on the salary grid on a day (the "designated day") other than the first school day of the school year, the anniversary of the first day the employee was employed by the board or the day specified in connection with the employee's additional qualifications, the movement will occur on the 97th school day after the designated day.
 - v. If the contract provides for movement more than once in a fiscal year, the movement will occur on the day determined under paragraph 6.
3. The following rules apply if, during a fiscal year, the employee's period of employment is not the same as the school year:
 - i. Postponement period: For the purposes of subparagraphs ii, iii, iv and v, the employee's postponement period is the number of days calculated by dividing by two the number of days in the employee's period of employment during the fiscal year. If this calculation results in a number that includes a fraction of a day, increase this number of days to the next highest whole number.
 - ii. If the collective agreement provides for movement on the salary grid on the first school day of the school year, the movement will occur on the day after the postponement period expires. For the purposes of this subparagraph, the postponement period commences on the first school day of the school year.

- iii. If the collective agreement provides for movement on the salary grid on the anniversary of the first day the employee was employed by the board, the movement will occur on the day after the postponement period expires. For the purposes of this subparagraph, the postponement period commences on the anniversary of the first day the employee was employed by the board.
 - iv. If the collective agreement provides for movement on the salary grid when the employee earns additional qualifications, the movement will occur on the day after the postponement period expires. For the purposes of this subparagraph, the postponement period commences on the day specified in the collective agreement for the purpose of movement on the grid when the employee earns the additional qualifications.
 - v. If the collective agreement provides for movement on the salary grid on a day (the “designated day”) other than the first school day of the school year, the anniversary of the first day the employee was employed by the board or the day specified in connection with the employee’s additional qualifications, the movement will occur on the day after the postponement period expires. For the purposes of this subparagraph, the postponement period commences on the designated day.
 - vi. If the collective agreement provides for movement more than once in a fiscal year, the movement will occur on the day determined under paragraph 6.
4. However, paragraphs 2 and 3 do not apply with respect to board employees who are represented by an employee bargaining agent that is a party to either of the following memoranda of understanding:
- i. “Memorandum of Understanding Between Association of Professional Student Services Personnel (APSSP) and the Ministry of Education”, dated July 30, 2012.
 - ii. “Memorandum of Understanding Between the Ministry of Education and Halton District Educational Assistants Association; Educational Assistants Association of the Waterloo Region District School Board; Dufferin-Peel Educational Resource Workers’ Association; and Association des enseignantes et des enseignants franco-ontariens (AEFO)”, dated August 31, 2012.

(8) Paragraph 6 of subsection 3 (2) of the Regulation is amended by striking out “paragraphs 2 to 5 do not apply and instead each movement will occur” in the portion before the formula and substituting “each movement will occur”.

(9) Subsection 3 (2) of the Regulation is amended by adding the following paragraph:

7. If the collective agreement provides for movement on the salary grid, the employee shall be paid the amount, if any, determined in accordance with the following rules, and the amount is payable on the last day of the restraint period:
 - i. Actual salary increase during restraint period: Calculate the amount by which the employee's salary, at the end of the restraint period, had increased as a result of his or her movement on the salary grid during the restraint period.
 - ii. Potential salary increase: Calculate the amount by which the employee's salary, at the end of the restraint period, would have increased as a result of his or her movement on the salary grid during the restraint period, determined as if paragraphs 2, 3 and 6 did not apply in the circumstances.
 - iii. Difference: Subtract the actual salary increase calculated under subparagraph i from the potential salary increase calculated under subparagraph ii, and express the resulting amount as a percentage of the potential salary increase.
 - iv. Amount of payment: If the percentage calculated under subparagraph iii is greater than 50 per cent, the amount payable to the employee under this paragraph is calculated using the formula,

$$(C - D) \times E$$

in which,

“C” is the percentage calculated under subparagraph iii,

“D” is 50 per cent, and

“E” is the amount of the potential salary increase calculated under subparagraph ii.

- v. No payment: If the percentage calculated under subparagraph iii is 50 per cent or less, no amount is payable to the employee under this paragraph.

(10) Subsection 3 (4) of the Regulation is amended by adding the following paragraph:

7. Waterloo Catholic District School Board.

(11) Section 3 of the Regulation is amended by adding the following subsection:

(7.1) For the purposes of subparagraph 2 ii of subsection 4 (1) of the Act, in respect of a collective agreement between a board and a bargaining unit represented by the Canadian Union of Public Employees, the following apply:

1. To the extent that they apply to employees other than teachers, the terms set out under the heading “G. Unpaid Leave Days” in the “Memorandum of Understanding between the Ministry of Education and the Ontario English Catholic Teachers’ Association (OECTA)”, dated July 5, 2012, are replaced by,
 - i. the terms set out under the heading “N. Offsetting Measures” in the “Memorandum of Understanding between the Ministry of Education and Canadian Union of Public Employees — Ontario School Board Coordinating Committee”, dated December 31, 2012, and
 - ii. the terms set out under the heading “O. Reconciliation” in the Memorandum of Understanding referred to in subparagraph i.
2. The collective agreement shall contain the provision set out under the heading “M. Letter of Understanding — Job Security” in the Memorandum of Understanding referred to in subparagraph 1 i.

3. The Regulation is amended by adding the following sections:

Special rules and exemptions, bargaining units of early childhood educators

3.1 (1) This section applies with respect to a collective agreement between any of the following boards and an employee bargaining agent for a bargaining unit of employees who are early childhood educators within the meaning of the *Education Act*, and with respect to those boards, employee bargaining agents and employees:

1. Durham Catholic District School Board.
2. Durham District School Board.
3. Trillium Lakelands District School Board.
4. Waterloo Region District School Board.

(2) The restraint period ends on August 31, 2013 for employees of a board listed in subsection (1) who are in a bargaining unit of early childhood educators.

(3) Sections 7 and 8 of the Act do not apply with respect to a collective agreement that expired on August 31, 2012.

(4) Subsections 6 (1) and (2) of the Act do not apply with respect to a collective agreement that is settled or imposed on or after January 2, 2013.

(5) The following are prescribed as terms that are to be included in every collective agreement that is settled or imposed on or after January 2, 2013:

1. The employee must take one unpaid day of leave on a professional activity day in the 2012-2013 school year.

(6) For greater certainty, the terms prescribed in subsection (5) are prescribed for the purposes of subparagraph 2 ii of subsection 4 (1) of the Act as terms that modify or replace terms set out in the “Memorandum of Understanding between the Ministry of Education and the Ontario English Catholic Teachers’ Association (OECTA)”, dated July 5, 2012.

Exemptions, certain employees of Durham District School Board

3.2 (1) This section applies with respect to a collective agreement between Durham District School Board and the Canadian Union of Public Employees for a bargaining unit of employees who are employed in the board’s Continuing Education Department, and with respect to that board, that employee bargaining agent and those employees.

(2) The restraint period ends on August 31, 2014 for the employees in the bargaining unit of employees in the Continuing Education Department.

(3) Subsections 6 (1) and (2) of the Act do not apply with respect to a collective agreement that is settled or imposed on or after January 2, 2013.

Commencement

4. This Regulation is deemed to have come into force on September 1, 2012.