



## Rules on perks in the broader public sector

Learn about the Broader Public Sector (BPS) Perquisite Directive.

### About the BPS Perquisites Directive

The BPS Expenses Perquisites Directive sets out rules for broader public sector organizations about perks. It resembles what is already in place for Ontario government ministries.

The BPS Perquisites Directive applies to all designated broader public sector organizations, as defined under the *Broader Public Sector Accountability Act, 2010*.

Broader Public Sector Accountability Act, 2010 [Link to: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_10b25\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10b25_e.htm)]

The rules on perks for the Ontario Public Service and the Broader Public Service are aligned to promote consistent behaviour.

To find out if a BPS organization needs to comply with the BPS Perquisites Directive, see the link below.

<http://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/EN/bps-procurementdirective-apply>

## Questions and Answers for Broader Public Sector Organizations on the BPS Perquisites Directive

### 1. What is the purpose of the Broader Public Sector (BPS) Perquisites Directive?

The purpose of the BPS Perquisites Directive is to set out the requirement for the designated BPS organizations to establish rules on perquisites where these are provided through public funds.

Under the Directive, designated broader public sector organizations are not allowed to provide items such as a golf club membership or seasons tickets to events under any circumstances.

Amendments to the *Broader Public Sector Accountability Act, 2010* provide the authority for the Management Board of Cabinet to issue directives requiring the designated BPS organizations to establish rules on perquisites.

The requirements set out in the Directive contribute to greater alignment with the high

standards expected in ministries and agencies of the Government of Ontario.

## **2. Which organizations are covered by the BPS Perquisites Directive?**

The BPS Perquisites Directive applies to all designated BPS organizations under the *Broader Public Sector Accountability Act, 2010* defined as follows:

- a. every hospital;
- b. every school board;
- c. every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating annual operating grants and entitlements;
- d. every approved agency designated as a children's aid society under subsection 15 (2) of Part I of the *Child and Family Services Act*;
- e. every community care access corporation;
- f. every corporation controlled by one or more designated broader public sector organizations that exists solely or primarily for the purpose of purchasing goods or services for the designated broader public sector organization or organizations;
- g. every publicly funded organization that received public funds of \$10 million or more in the previous fiscal year of the Government of Ontario.

Publicly funded organizations that received less than \$10 million in public funds in the previous fiscal year of the Government of Ontario are not required to follow the BPS Perquisites Directive. In this case, the Directive serves as a guideline to all other publicly funded organizations as defined under the *Broader Public Sector Accountability Act, 2010*.

Note that the *Broader Public Sector Accountability Act, 2010* and *Ontario Regulation 219/11* made under the Act exclude some entities from the definition of publicly funded organizations. These include:

- Municipalities;
- local boards;
- long-term care homes;
- boards of health;
- organizations that undertake their activities for the purpose of profit to their shareholders;
- district social services administration boards established under the *District Social Services Administration Boards Act*; and
- First Nations.

## **3. Which individuals within a designated BPS organization are covered by the BPS Perquisites Directive?**

The rules apply to any person in a designated BPS organization, including the following:

- appointees;
- board members;
- elected officials (e.g. school trustees);
- employees.

#### **4. What is a "perk"?**

For the purposes of the BPS Perquisites Directive, a perquisite (or perk) refers to a privilege that is provided to an individual or to a group of individuals, provides a personal benefit, and is not generally available to others.

A perquisite is not allowable if it is not a business-related requirement. To be allowable, a perquisite must be a business-related requirement for the effective performance of an individual's job.

#### **5. What are some examples of non-allowable perquisites?**

The following are perks that are not permitted under any circumstance:

- club memberships for personal recreation or socializing purposes, such as fitness clubs, golf clubs or social clubs;
- seasons tickets to cultural or sporting events;
- clothing allowances not related to health and safety or special job requirements;
- access to private health clinics – medical services outside those provided by the provincial health care system or by the employer's group insured benefit plans;
- professional advisory services for personal matters, such as tax or estate planning.

#### **6. Are there some items which are not considered perquisites?**

The BPS Perquisites Directive sets out certain items that are not considered perks:

- provisions of collective agreements;
- insured benefits;
- items generally available on a non-discriminatory basis for all or most employees (e.g. Employee Assistance Program, pension plans);
- health and safety requirements (e.g. provision of work boots);
- employment accommodations made for human rights and/or accessibility considerations (e.g. special workstations, work hours, religious holidays);
- expenses covered under an organization's rules on travel, meals and hospitality (established in accordance with the BPS Expenses Directive).

#### **7. What are the requirements of the BPS Perquisites Directive?**

The purpose of the BPS Perquisites Directive is to set out the requirement for the designated BPS organizations to establish rules on perquisites where these are provided through public funds.

The Directive sets out six requirements that must be included in the perquisites rules for the organization:

1. Rules on perquisites must set out that the following perquisites are not allowed under any circumstance:

- o club memberships for personal recreation or socializing purposes, such as fitness clubs, golf clubs or social clubs;
- o seasons tickets to cultural or sporting events;
- o clothing allowances not related to health and safety or special job requirements;
- o access to private health clinics – medical services outside those provided by the provincial health care system or by the employer’s group insured benefit plans;
- o professional advisory services for personal matters, such as tax or estate planning.

2. Rules on perquisites must set out that perquisites that are not related to business requirements are not allowed.

3. Rules on perquisites must include an accountability framework to ensure that there is appropriate governance, and that everyone understands who in the organization has the authority for approvals. The approval authority for an allowable perquisite should be at a high level within the organization.

4. Rules on perquisites must require that good record-keeping practices be maintained for verification and audit purposes.

5. Rules on perquisites must set out that a perquisite is allowable only in limited and exceptional circumstances where it is demonstrated to be a business-related requirement for the effective performance of an individual’s job.

6. Rules on perquisites must set out how summary information about allowable perquisites will be made publicly available. This summary information should be made available on an annual basis. Personal information should not be provided.

**8. Are employees going to lose any insured benefits as a result of this new Directive?**

No, the Directive explicitly does not apply to insured benefits. They are not considered perks.

**9. If golf memberships were provided to certain individuals before the Directive was released, can they continue to use the membership to golf?**

Club memberships for personal recreation or socializing purposes, such as golf clubs or social clubs, are not permitted under the BPS Perquisites Directive. The organization can no longer pay for the golf club membership. Each organization must use its discretion on how to deal situations where the membership has already been paid.

**10. What about existing employment contracts? Does the BPS Perquisites Directive impact existing contracts?**

The BPS Perquisites Directive and rules established under it could potentially impact certain provisions of existing contracts. Any provision in an agreement that conflicts with the requirements under specified Parts of the *Broader Public Sector Accountability Act, 2010* (including Part IV.1 on Perquisites) is not valid or enforceable.

Designated BPS organizations should consult their own legal advisors about potential impacts on specific agreements.

**11. What if an organization's collective agreement with a bargaining agent is inconsistent with the BPS Perquisites Directive?**

The BPS Perquisites Directive states that it does not prevail over a collective agreement between an organization and a bargaining agent representing employees of the organization.

**12. My organization receives funding from various sources. Which funds do I include to calculate the value of public funds received?**

You have to take into account the public money that is provided directly by the Government of Ontario or an agency of the Government of Ontario, which is defined as a public body designated in regulations made under the *Public Service of Ontario Act, 2006*, through a grant, transfer payment or other funding arrangement. It also includes the money received by school boards from taxes levied under the *Education Act* for school purposes.

In the calculation, do not include:

- money that is paid for the provision of goods or services to the Government of Ontario or an agency of the Government of Ontario;
- money that is paid by the Government of Ontario or an agency of the Government of Ontario under a fee for service arrangement; and
- money that is provided by the Government of Ontario or an agency of the Government of Ontario, by way of a loan or loan guarantee.

**13. Where can I find a list of the agencies of the Government of Ontario, which are defined under the *Broader Public Sector Accountability Act* to mean public bodies designated under the *Public Service of Ontario Act*, that will help me in my calculation of public funds?**

Please consult [Regulation 146/10](#) under the *Public Service of Ontario Act, 2006* for a complete listing of public bodies. Please note that this listing is updated from time to time.

**14. Will the designated BPS organizations have to report on their compliance with the BPS Perquisites Directive?**

The *Broader Public Sector Accountability Act, 2010* requires Local Health Integration Networks (LHINS) and hospitals to prepare attestations to be submitted regarding their compliance with the BPS Perquisites Directive.

For other designated BPS organizations, their accountability agreements with the Province will require compliance with the legislation. In addition, the legislation provides the power to make regulations requiring more organizations to provide attestations of compliance with the requirements of the Act.

**15. Would BPS organizations have to use the perquisites rules for all types of funding, or only for those provided through public funds?**

The purpose of the BPS Perquisites Directive is to set out the requirement for the designated BPS organizations to establish rules on perquisites where these are provided through **public** funds.

BPS organizations must make their own determinations on how to spend money they have received from other sources. Any decisions about perquisites should be made with due consideration for the accountability and transparency, and for the potential for public and media attention. People who have contributed to the revenue of a broader public sector organization, either directly through fees, such as university tuition, or through fundraising activities might not appreciate that their dollars are being used to fund items that would be considered perks.

**16. Is there a directive on perks for the Ontario Public Service?**

Yes. The Perquisites Directive for the Ontario Public Service covers all employees and appointees of all ministries, including ministers' offices, all classified agencies and organizations prescribed by [regulation](#) under the *Public Sector Expenses Review Act, 2009*.

The directives on perquisites for the Ontario Public Service and the BPS are aligned in order to promote consistency in behaviour, not only across the OPS but also the BPS.

**17. The commercial parking lot where I work provides a discount to all employees who work in the building. Is this a perk?**

No, this is not considered a perk. It is a discount provided to all building tenants and the expense is paid by individuals and not reimbursed by the employer. Another example would be discounted corporate rates provided by a fitness club that are paid by members without reimbursement or subsidy from their employers.

**18. One of our employees requires an ergonomic desk and chair at work. Would this be considered a perk?**

No, employment accommodations made for human rights and/or accessibility considerations (e.g. special workstations, work hours, religious holidays) are set out in legislation – the *Ontario Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act, 2005* and are explicitly excluded from the Directive.

**19. How do we determine if a specific item which we provide to our employees is a perk and whether or not it is allowable?**

Designated BPS organizations are expected to use their own best judgment in establishing rules on perquisites within the parameters of the BPS Perquisites Directive, and in applying those rules in specific situations.

The BPS Perquisites Directive includes the following requirements which must be included in

the perquisite rules for the organization:

*"4.3 Rules on perquisites must include an accountability framework to ensure that there is appropriate governance, and that everyone understands who in the organization has the authority for approvals. The approval authority for an allowable perquisite should be at a high level within the organization."*

and

*"4.5 Rules on perquisites must set out that a perquisite is allowable only in limited and exceptional circumstances where it is demonstrated to be a business-related requirement for the effective performance of an individual's job."*

The approval authority identified in an organization's accountability framework referenced in section 4.3 would be responsible for determining whether an item is allowable as a "business-related requirement". This decision would be made in accordance with section 4.5, having regard to all of the relevant facts.

Any decisions about perquisites should be made with due consideration for the prudent and responsible use of taxpayer dollars, and focussing on compliance with the Directive's principles of accountability, transparency and value for money. BPS organizations should also take into account the potential for public and media scrutiny.

Please note that section 4.6 of the Directive states *that "rules on perquisites must set out how summary information about allowable perquisites will be made publicly available."*

## **20. Can we ask our professional advisors (e.g. legal counsel, human resource specialists) or insured benefit carriers to contact the government with questions on the BPS Perquisites Directive to help them formulate their advice to our organization?**

The Ministry of Government Services is taking questions directly from designated BPS organizations (see FAQ 21 below). However, the ministry is not in a position to answer questions from third parties such as professional advisors or insured benefit carriers to help them formulate their specialized advice to client organizations.

The BPS Perquisites Directive requires designated BPS organizations to establish rules on perquisites. While the Directive sets out certain requirements for these rules, the organizations themselves are responsible for determining their own rules in keeping with these requirements.

## **21. Where can I send questions about the BPS Perquisites Directive?**

If you are a designated BPS organization with questions on the BPS Perquisites Directive, please send your questions to [corpolb@ontario.ca](mailto:corpolb@ontario.ca).