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Pension *Pulse*

Ontario Pension Reform: Part 1

The Ontario government introduced a sweeping pension reform bill in the legislature on December 9, 2009 - Bill 236, An Act to amend the *Pension Benefits Act*. According to the government's press release, this is "part of a multi-step process," with more changes to be introduced in the new year.

The close to 50 pages of reform measures in Bill 236 follow many of the recommendations of the Expert Commission on Pensions released late last year. The most significant changes are as follows:

Immediate vesting of benefits: Pension benefits will be immediately vested instead of vested after two years of participation in a pension plan. This follows Quebec's legislation. This is certainly beneficial for employees, however will add to administrative burden for employers, particularly for those in industries with high turnover. This may lead to a greater tendency to adopt longer eligibility periods for membership.

Grow-in benefits extended: Currently, in the event of a partial or full wind-up of a pension plan, members with 55 or more age-plus-service points are entitled to grow into a pension plan's subsidized early retirement provisions. The grow-in provisions will be extended to all terminations of employment for members who meet the 55-points requirement, except for termination for cause, with or without a plan wind-up. This will be very costly for plan sponsors and administratively burdensome. One may have anticipated the government to eliminate the grow-in rules, rather than expand them. No other jurisdiction in Canada, other than Nova Scotia, has such rules. The Pension Review Panel in Nova Scotia has recommended against making such rules mandatory.

Phased retirement: Limited phased retirement measures are included in the reform bill. They will be permissive rather than required. Plan members who are at least 60 years of age (or 55 or more and entitled to an unreduced pension) and whose pay is reduced, may enter into a written agreement to receive a partial pension, not to exceed 60% of the member's pension. These rules are restrictive, but a move in the right direction.

Partial wind-ups: As is the case in Quebec, partial wind-ups will be removed from the legislation. There are transition provisions for partial wind-ups in process. In the interim, plan administrators will not be required to purchase annuities for members affected by a partial wind-up. This is consistent with the recent decision of the Financial Services Tribunal in *Imperial Oil Limited v. Superintendent*, released December 2, 2009.



Sale of business provisions: The procedures in the legislation in respect of asset transfers, mergers, division of pension plans and divestitures are being simplified. This will be subject to prescribed rules. In most circumstances, approval of the Superintendent will be required. In addition, in certain circumstances, plan members will be permitted to consolidate their benefits in one pension plan.

Small benefits amount increased: The legislation currently permits a lump sum cash payment of a pension if the amount of pension payable upon the normal retirement date is less than 2% of the Year's Maximum Pensionable Earnings under the Canada Pension Plan (\$46,300 in 2009). This is being increased to 4% of the YMPE, or if the commuted value of a member's pension is less than 20% of the YMPE. With immediate vesting of pensions, there may be a higher frequency of small benefits being cashed out. Increasing the limit makes sense.

Surplus sharing on full wind-up: Surplus payments to a plan sponsor upon wind-up of a pension plan will be permitted, even where the documents do not so provide, if there is a surplus sharing agreement with plan members, former members and beneficiaries.

Notice of plan amendments: The legislation currently differentiates between ordinary amendments and "adverse" amendments. In the case of an adverse amendment, 45 days' notice must be provided to members. The reforms will require 45 days' advance notice for all plan amendments. This will be administratively burdensome and costly, particularly in the case of routine amendments.

Electronic communication: Finally, pension legislation will explicitly permit member statements and other communications to be sent electronically. Exceptions to the general rule may be prescribed. This should reduce cost and administrative burden for employers.

Restructuring and insolvency: The Superintendent will be empowered to approve agreements in restructuring proceedings under the *Companies Creditors Arrangement Act* or under the *Bankruptcy and Insolvency Act*.

Part 1 of Ontario's pension reform is not a bad start. Immediate vesting, the elimination of partial wind-ups, the introduction of phased retirement rules and permitting electronic communication are positive developments. The expansion of the grow-in rules will be unique in Canada and will impede efforts at pension harmonization. We await Part 2. ■



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