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## PENSIONS | BENEFITS

### IN THIS ISSUE DECEMBER 2009

#### ONTARIO PENSION REFORM: JUST IN TIME FOR THE HOLIDAYS

BY MARK DUNSMUIR

The Ontario government released the following pension reform package on December 9, 2009:

<http://news.ontario.ca/mof/en/2009/12/ontarios-proposed-pension-reforms---technical-background.html>

These proposed changes to Ontario pension law will be relevant to you only if you administer, or are a beneficiary of, a registered pension plan with Ontario members. Dwight Duncan, Finance Minister for the Liberal Ontario government, promised that he will release a second package of pension reforms some time next year.

#### A not-so-fine balance

The government press release claims that the reforms are designed to strike a balance between the interests of employers and employees. However, most of the reforms seem to favour employees. Certain administration costs will increase for employer sponsors of defined benefit (DB) and defined contribution (DC) registered pension plans. Sponsors of DB plans could see their contribution obligations increase due to the extension of special early retirement benefit enhancements known as “grow-in” benefits, depending on the structure of early retirement benefits in their particular plans.

On the other hand, there are some welcome improvements in the rules regarding pension plan mergers, procedures to implement surplus sharing deals and the elimination of partial wind-ups.

#### What’s missing

The proposed changes do not touch many hot-button issues for which the pension industry has been waiting.

No mention is made of extending protection of pension benefits of bankrupt employers, nor the provision of a public retirement savings option, nor the relaxation of funding requirements. We may see those issues addressed in the second package of pension reform that Dwight Duncan promised for 2010.

#### Key additional employer costs and obligations

The following proposed amendments will increase employer costs of maintaining a registered pension plan with Ontario members:

*Grow-in benefits in DB plans will be extended.* Currently, DB pension plans which provide an enriched early retirement option must provide a “grow-in” benefit to employee members whose age and service total at least 55 points **only** if the members terminate as part of a partial or full pension plan wind-up. Typically, this expensive grow-in benefit is granted only on plant closures. Not any more. Commencing January 1, 2012, grow-in benefits must be given to all members with 55 points, regardless of whether they are terminating due to a plant closure. The only exception will be if the affected employee voluntarily resigns or is fired “for cause.” The upside of this proposal is that there will no longer be any partial plan terminations. The downside, of course, is that this could mean a significant additional funding cost to DB plan sponsors. The financial impact will depend on the design of the enhanced early retirement provisions in each particular pension plan.

*Immediate vesting.* As soon as Ontario employees join a registered pension plan, the employees will immediately be vested in their benefit. Employers will no longer be able to draw on forfeiture accounts to fund contribution obligations and expenses. Currently Québec is the only Canadian jurisdiction to require immediate vesting. Employers will still be able to impose a two-year waiting period to join a pension plan.

*Increased employer sponsor obligations to inform pensioners and members, and a requirement to give pensioners and members greater access to plan oversight.* All plan sponsors, both DB and DC, will have to provide increased access to information for plan members and pensioners. The rules for disclosure of

plan amendments will require a heightened level of disclosure. Both changes will likely increase the administrative costs and burden on employers.

### **Some simplification of pension plan administration**

The following proposed changes will simplify the administration of DB and DC pension plans in certain circumstances.

*The rules for merging pension plans and dealing with transfers between plans will be “clarified and simplified.”* The proposed reform will be of some assistance to employers who have been unable to proceed with plan mergers or transfers of benefits following purchases of businesses due to legal challenges.

*Elimination of partial plan wind-ups.* No partial plan wind-ups will be allowed following a transition period that is planned to end on December 31, 2011. This is very good news for DB and DC plan sponsors. The requirement to distribute surplus on partial wind-ups disappears. The expense and delays in carrying out partial wind-ups will no longer exist. There will no longer be disputes regarding the annuitization of benefits in partial wind-up circumstances.

Unfortunately, for employer sponsors of DB plans, the elimination of partial plan wind-ups comes at the cost having to extend grow-in benefits, and to provide immediate vesting.

*Surplus sharing agreements will no longer require expensive historical reviews.* If an employer can get the members of a terminated pension plan to agree to share the surplus, it will no longer be necessary for the employer to prove that it owns the surplus according to historical plan documents.

### **What's next**

The first draft of the bill proposing to amend the legislation has been released:

[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&Intranet=&BillID=2261](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2261)

However, the ultimate effect of the new pension laws

cannot be fully determined until we see the associated regulations which will be released at a later date.

Given the current pension reform fever now gripping many jurisdictions across the country, employers who sponsor DB pension plans can only hope that Mr. Duncan will soon grant their holiday wish for relaxed funding requirements.

### **CONTACT US**

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