



# Special Notice

December 18, 2009

## Ontario pension law reform: stage one

After a long wait, Ontario has finally introduced stage one of legislation to reform pension plan laws in the province. On December 9, 2009, the Minister of Finance tabled the *Pension Benefits Amendment Act*. It is based on the recommendations from the Expert Commission on Pensions made over a year ago. A second stage, planned for 2010, will address the big issues like plan funding rules and the pension guarantee fund. Stage one is mostly technical, with several changes that should simplify current pension plan administration, but not without cost. Their implementation will require communication to members, and administration and pension system changes. The main changes introduced in stage one are outlined below.

### **Immediate vesting**

Currently, benefits accrued under a pension plan after January 1, 1987 are vested after two years of plan membership and benefits accrued before that date are vested at age 45 with at least 10 years of service. The reform bill will repeal both vesting rules and introduces immediate vesting of all accrued pension benefits. When implemented, this change may increase contribution requirements slightly for plans where benefits don't currently vest immediately. It will also increase termination payouts for short-service employees. Pension plan texts will need to be amended for the new vesting rule once the law is passed.

### **Grow-in benefits on involuntary terminations**

"Grow-in" benefits are the subsidized early retirement benefits to which a member would be entitled in the future, if the pension plan were not wound up and the member continued to participate in the plan. Current rules require that grow-in benefits must be provided on a full or partial plan wind-up for members whose combination of age and years of continuous employment is at least 55 ("55 points").

Effective January 1, 2012, the reform bill expands the current rule to include all involuntary terminations of employment without cause. Multi-employer and jointly sponsored pension plans may elect to be exempted from this requirement.

The change will increase the cost for single-employer plans that provide subsidized early retirement benefits. Currently, grow-in only leads to accelerated solvency contributions for ongoing plans to reflect hypothetical benefit enhancements in the event of a wind-up. Under the reform bill, grow-in will become an ongoing cost for benefits provided to employees with 55 points who are not otherwise eligible to retire but who terminate employment at the employer's initiative without cause. Costs will be higher for plans with a significant active population below retirement age, compared to more mature plans with a greater proportion of retirees. The new rules will require changing commuted value calculation systems and paying higher termination benefits on workforce reductions or lay-offs.

### **No more partial wind-ups**

As a consequence of immediate vesting and extending grow-in benefits to involuntary terminations, the reform bill will eliminate partial wind-ups. Currently, pension plans may be wound up in whole or in part by the administrator or by order of the regulator, triggering immediate vesting and grow-in for affected members only. The reform bill will disallow partial wind-ups and repeal the regulator's authority to declare them. New transition provisions will apply to partial wind-ups with effective dates before the repeal. The transition period is planned to end on December 31, 2011. The key advantages

of eliminating partial wind-ups include removing the requirement to distribute surplus (due to the Monsanto ruling), and eliminating the costly partial wind-up process. Also, the new rules remove the requirement that plan administrators purchase life annuities for pension benefits related to partial wind-ups in progress, provided the benefits have not yet been annuitized and provision is made for the distribution of any applicable surplus.

### **Advance notice of all plan amendments**

Currently, advance notice of “adverse” plan amendments must be provided to affected members where benefits may be reduced for future periods. The reform bill expands this requirement to all plan amendments and to all members, retired members and former members with deferred entitlements, with only limited exceptions.

### **New rules on asset transfers**

New rules (yet to be released) are expected to clarify and simplify the procedures and methods for determining amounts of assets transferred between plans due to corporate restructuring or sale of a business. Transfers that preserve the commuted value of a member’s accrued benefits will be allowed, even if the member’s specific benefits in the new plan are different from the original plan. Special transition rules will be in place until July 1, 2013 for plans affected by past restructurings.

### **Higher unlocking limits for small pensions**

Currently, a plan may pay a cash lump sum, instead of a deferred pension or a locked-in transfer, to a former member if the annual pension at normal retirement is less than 2% of the Year’s Maximum Pensionable Earnings (YMPE). The reform bill provides for lump-sum payments if the annual pension is less than 4% of YMPE (\$1,888 in 2010), or its commuted value is less than 20% of YMPE (\$9,440 in 2010). This change should simplify plan administration, but will require changing pension administration systems and procedures, and may require an amendment to the pension plan text.

### **Phased retirement option**

The reform bill allows pension plans to provide for phased retirement on a voluntary basis. To qualify, members must be at least age 55 and eligible for an unreduced early retirement pension, or at least age 60. Phased retirement must be provided under a written agreement between the plan member and the employer. The agreement must provide for a reduction in the member’s regular hours of work when payments begin under the phased retirement option. Other conditions may be prescribed in the pending regulations.

### **Other measures**

Surplus sharing agreements between employers, members and pensioners may now be implemented within prescribed parameters, without the need to review historical plan documents. The reform package’s companion regulations are expected to include additional measures to increase transparency and access to information for plan members and pensioners, enhance regulatory oversight, improve plan administration, and reduce compliance costs. Once the reform bill is passed into law and the companion regulations are released, Eckler will provide a detailed analysis of what plan sponsors need to do to comply.

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