Special Notice

Dec 15, 2021

New Brunswick introduces amendments to *Pensions Benefits Act*

On November 3, 2021 New Brunswick introduced *Bill 71, An Act to Amend the Pension Benefits Act* (Bill 71). Bill 71 proposes changes on several topics including reserve accounts, administrative errors, inactive member statements, electronic communications, and annuity discharges. This *Special Notice* provides an overview of the changes and the implications for plan administrators and members moving forward.

Bill 71 introduces several changes of interest to plan administrators, employers and plan members, summarized below.

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Introduction of reserve accounts

Bill 71 amends the *Pension Benefits Act* (PBA) to allow for the introduction of reserve accounts for plans with a defined benefit provision. Reserve accounts are a separate account within a pension fund, established under newly introduced provisions in the PBA. Funds in reserve accounts are subject to different treatment than funds in the main pension fund when a pension plan fully winds up.

Pension plans that contain a defined benefit (DB) provision will now be entitled to establish a reserve account for the DB portion of a plan to receive contributions made in respect of solvency deficiencies and other prescribed contributions. Pension plans are prohibited from transferring assets from the main pension fund to the reserve account.

The balance in a reserve account can only be withdrawn by the employer upon the full wind-up of a plan, and only if the plan is considered to have a "surplus" as defined in the PBA for plans considering a distribution of surplus on full wind-up. The balance cannot be withdrawn before all benefits and payments due to members, former members or other entitled parties on full wind-up have been paid and the Superintendent has accepted the employer application for the transfer. The balance in the reserve account may be paid to the employer regardless of whether there is provision for this in the plan text. Any distribution of surplus to the employer from the main pension fund must be provided for in the plan text.

Shortened qualification periods for pension entitlements

Bill 71 introduces additional details to section 56 of the PBA to allow pension plans to provide for shorter qualification periods for deferred pension entitlements than those currently set out in the PBA. A plan that chooses a shorter qualification period may permit a member to withdraw their contributions with interest upon termination after becoming entitled to a deferred pension in accordance with the plan text but before the completion of the maximum qualification period in the PBA.

Remedies for administrative errors by employer

Bill 71 provides new rules for dealing with administrative errors by the employer. The new requirements apply when an employer pays an amount directly that should have been paid out of the pension fund, or when an employer makes an overpayment of contributions into the pension fund.

A plan administrator can reimburse an employer for the administrative errors above if the administrator applies for, and obtains consent from, the Superintendent before the later of:

- 24 months after the date on which the employer makes the payment or overpayment; or
- Six months after the date on which the administrator, acting reasonably, becomes aware of the payment or overpayment.

Administrative changes

Bill 71 clarifies that plan administrators must apply to the Superintendent for registration of a plan within 60 days of the establishment of the plan, with no exceptions. Plan administrators filing an application for the registration of plan amendments may now be required to file a certified copy of the restated pension plan if requested by the Superintendent.

Member statements and communication

Bill 71 amends section 25 of the PBA to require plan administrators to also communicate and/or transmit to each former member a written statement at the prescribed intervals containing the prescribed information about the pension plan and the former member's pension benefits and ancillary benefits.

Additionally, Bill 71 now permits plan administrators to disclose some member information by electronic means, provided the intended recipient consents to receiving information electronically. Further details regarding the type of information that can be sent electronically and the consent required are expected soon.

Plan membership

Bill 71 amends the required waiting period for employees to become plan members from 24 months of full-time continuous employment to any shorter period of full-time continuous employment provided for by the pension plan.

Bill 71 also provides employees who are members of a religious group with a right to refrain from membership, allowing them to refuse membership in a pension plan if their articles of faith preclude members from being in a pension plan.

Annuity discharge

Bill 71 adds a provision to discharge the administrator of the plan from liability if annuities are purchased from an insurance company in respect of defined benefits in the pension plan. The administrator must ensure all prescribed requirements are met for the annuity purchase.

Impact

Many of these changes will be welcome to administrators of New Brunswick-registered pension plans.

The addition of reserve accounts brings the New Brunswick legislation in line with many other jurisdictions who have recently updated their funding regimes. This change will reduce the risk that any additional contributions made to fund solvency deficiencies will become "trapped surplus" on the wind-up of the plan.

Specific language relating to administrative errors should streamline the process to address issues with inadvertent contribution errors.

Annuity discharge provisions will also be helpful in clarifying the employer obligations after an annuity purchase.

Bill 71 amends the PBA to specify that the Financial and Consumer Services Commission may make a rule in respect of related regulations. Rules may be general or specific in their application. Further details on the application and implementation of rules versus regulations are expected.

Finally, provisions relating to statements to former members are being added to pension legislation across the country. They can be useful in maintaining a connection to deferred plan members and should make it easier to start pensions for these members in a timely manner or settle benefits in a future plan wind-up.

Bill 71 has passed through the Legislative Assembly and is awaiting royal assent.

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