New ORPP Legislation: What Employers Need to Know

Bill 186, the *Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016*, was introduced on April 14, 2016 by Associate Minister of Finance Mitzie Hunter. Once passed, the legislation will formally enact the detailed provisions of the Ontario Retirement Pension Plan (ORPP) announced by the province in August 2015 and January 2016.

Specifically, it addresses the:

- requirement of employers and employees to contribute to the ORPP, and the limits of that requirement,
- determination of contributions, and
- benefits payable from the ORPP.

This *Special Notice* reiterates key plan design features of the ORPP released by the government and provides details on next steps in the ORPP rollout.
Key points:

- Despite ongoing discussions regarding a possible expansion of the Canada Pension Plan, Ontario is still moving ahead with the implementation of the ORPP.
- Bill 186 confirms employers and employees must contribute to the ORPP during probationary periods and waiting periods for membership in a comparable plan.
- While the bill defines employer, it does not define employee. While we expect that full-time, part-time, seasonal and temporary workers will be covered, it is not clear if any workers will be exempt.
- The bill specifically states employees of the federal government and judges are not considered to be employed in Ontario. The legislation is silent on the inclusion (or exclusion) of other federally regulated employees.

Details on previous announcements are available in other Eckler Special Notices: Ontario releases key ORPP design details and Ontario reveals key ORPP details.

Contribution requirements and limitations

The new legislation ties the contribution obligation of the employer to the obligation of each employee. In other words: if an employee must contribute to the ORPP, his or her employer must make contributions for the employee as well.

Employees ages 18 to 70 are required to contribute in respect of employment that is considered to be “employment in Ontario” and not covered under a comparable workplace pension plan.

Employment in Ontario covers employees who report for work at an establishment in Ontario, or who are paid by an Ontario-based employer but not required to work at the employer’s place of business.

To determine the comparability of workplace pension plans, the bill sets out the following tests:

- Defined benefit (DB) plans must have at least a 0.5% annual benefit accrual rate;
- Defined contribution (DC) plans must have total annual mandatory contributions of at least 8% of remuneration, of which at least 4% must be made by the employer;
- Multi-employer pension plans (MEPPs) must meet either the DB or the DC comparability test; and
- Hybrid plans and pooled registered pension plans (PRPPs) must meet tests to be set out in the regulations.

One new area the legislation addresses is the definition of employer. While the regulations may further refine this definition, Bill 186 defines an employer as a person who:

- pays remuneration to an employee;
- is an employer under any regulations authorized in the legislation; or
- is the employer of a holder of any office as described in the legislation.

Generally, employees are not able to simultaneously collect and accrue an ORPP pension. But there is an exception for recipients of post-retirement survivor pensions: a member who was receiving ORPP benefits can suspend payments in order to accrue additional benefits.

Bill 186 also sets out rules governing the benefits payments if a member dies during the suspension period.

Employees on maternity, parental, compassionate care or other leaves of absence listed in Part XIV of the Employment Standards Act, 2000 are not required to contribute to the ORPP during the leave, but they may elect to do so. An employer can only contribute to the ORPP in respect of a leave if the employee elects to contribute — the employer cannot pay the employee’s portion of the required contributions during a leave.
Eckler’s view: Our understanding is that base earnings will be used to assess a plan’s comparability, while ORPP contributions will be based on total earnings. However, the comparability test in Bill 186 simply refers to remuneration, so it is not clear what this term will mean for determining comparability and contributions.

Employers with comparable workplace plans will still need to collect and remit ORPP contributions for probationary employees and those who are not yet eligible to join the plan. As this will be complicated for employers to administer — and these employees will likely only receive small benefits from the ORPP — the benefits of this approach may not outweigh the drawbacks. While this feature is meant to provide seamless pension coverage for mobile employees who change jobs frequently, the lack of definition of employee means it is still unclear whether contract, seasonal and other workers will be covered by the ORPP.

ORPP contributions

An employee’s ORPP contribution is determined by multiplying the contribution rate (initially, 1.9%) by his or her contributory earnings (i.e., earnings between $3,500 and the annual maximum of $90,000). The maximum earnings limit will be increased annually after 2017 in line with the average wage index.

An employer must contribute an amount equal to each employee’s contribution. Contributions are payable to the ORPP Administration Corporation (AC). Employers will be charged interest — compounded daily — on overdue contributions. Failure to remit contributions may result in administrative penalties for the employer of up to $10,000.

The legislation also confirms ORPP contributions would not form part of the province’s general Consolidated Revenue Fund. Contributions and earnings attributed to those contributions will be held in trust by the ORPP AC.

Eckler’s view: The legislation explicitly outlines the fines and penalties for employers who do not remit ORPP contributions in a timely fashion. However, as the stated purpose of such penalties is to promote compliance — not to punish — it remains to be seen how often these penalties will actually be assessed by the AC in the event of repeated non-compliance.
Benefits payable, relationship breakdown and survivor benefits

The amount of ORPP pension accrued in a year and payable at age 65 will be 0.375% of pensionable earnings in the year, adjusted with indexing in accordance with the regulations. As previously noted, benefits payable from the ORPP will be paid as a lifetime pension, with a default of either a joint-and-survivor pension (for members with a spouse) or a 10-year guarantee period (for members without a spouse or whose spouse has waived the survivor benefit).

In the case of pre-retirement death, the member’s spouse, beneficiary or personal representative (i.e., estate executor or administrator) will receive a lump-sum payment. The amount paid will be equal to the greater of:

- the present value of the accrued pension the member would have received; or
- the total of the member’s ORPP contributions, plus interest.

When a member has both a cohabiting common-law spouse and a non-cohabiting married spouse, the benefit will be paid to the cohabiting spouse. The relevant time for determining the eligible spouse is the date of death, in the case of a pre-retirement benefit, or the date the pension starts, in the case of a post-retirement benefit.

ORPP members with shortened life expectancy must be allowed to commute their pensions to a lump sum, both before and after retirement. The pre-retirement commutation amount is the same as in the case of pre-retirement death. The regulations will provide for the calculation of post-retirement commutation benefits, as well as lump-sum payments of small benefits based on a minimum threshold.

Benefits payable from the ORPP will be subject to division on relationship breakdown. The regulations may address a number of matters relating to this division, including the manner of division and the redetermination of each spouse’s ORPP benefits post-division.

**Eckler’s view:** It is expected that the spousal waiver process — as well as the process for dividing ORPP benefits on relationship breakdown — will be based on the *Pension Benefits Act* (PBA). However, we will have to wait for the related regulations to confirm this.

**Implications and next steps**

As Bill 186 formalizes previously-released ORPP design details, there are few surprises in the legislation. However, there are still a number of questions left unanswered:

- How will the pension adjustment (PA) be calculated, and who will be responsible for calculating it?
- Which types of workers, if any, will be exempt from the definition of *employee*?
- Will the process by which a spouse can waive his or her benefit entitlements mirror the PBA’s?

The forthcoming regulations to Bill 186 should address some, if not all, of these and other outstanding questions. We also hope they will provide more information to help employers with the day-to-day ORPP administration.

The government has indicated it expects to start enrolling employers in the ORPP on January 1, 2017, with contributions in waves starting on January 1, 2018. Once the ORPP legislation and regulations are finalized, we expect the verification process for comparable plans — which is the AC’s responsibility — will start in the fall of 2016. This process will involve collecting...
data from employers to help identify how many Ontario employees they have (based on T4 filings), which will determine which contribution wave applies to them. However, Eckler believes there is still significant work to be done before the enrollment process can start.

Although the federal government continues to explore the possibility of expanding the CPP, with Ontario’s support, the province is still moving forward with ORPP implementation. While employers may be tempted to delay planning for the ORPP until after the June 16, 2016 First Ministers’ meeting and any CPP announcements, it’s important to start early to be ready for their ORPP enrollment date.