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Ontario Pension Law Changes – Electronic Communications and More

This *FYI* provides a summary of changes to Ontario's pension landscape in 2019, an overview of the latest legislative developments, and an idea of what plan sponsors and administrators can expect in 2020.

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2019 in review

The changes to Ontario's pension landscape already made in 2019 include:

- Adopting regulatory changes to certain funding rules impacting defined benefit (DB) plans.
- Passing legislation clarifying the rules for contribution holidays and expanding the application of the target benefit pension plan framework to non-unionized multi-employer pension plans.
- Changing the provincial pension regulator from the Financial Services Commission of Ontario (FSCO) to the Financial Services Regulatory Authority (FSRA).
- Proclaiming the annuity discharge provisions and related regulations.

In addition to the above, two pieces of omnibus legislation were introduced late in 2019, both of which contained amendments to the *Pension Benefits Act* (PBA). The measures in Bill 132 and Bill 138 include:

- New rules for the use of electronic communications.
- Updates to the family law rules addressing changes in member status, and the valuation and division of benefits transferred to successor plans.
- Clarification of legislative requirements for converting single employer pension plans to jointly sponsored pension plans (JSPPs).

Bill 132

Introduced October 28th, Bill 132, the *Better for People, Smarter for Business Act*, contains a range of amendments to the PBA, addressing matters including electronic communication and family law rules.

Communicating with members

Electronic communications: Administrators may send documents required by the PBA, regulations or FSRA electronically, subject to meeting specific requirements:

- Administrators wishing to send documents electronically must first send members a notice via mail indicating the date electronic distribution will commence, the member email address currently on file, and any other prescribed information.
- A reminder notice must be sent when a member transitions to being a retired member.
- Administrators must inform members they can opt out of electronic communication at any time.
- Following receipt of the required notice via mail, a member who does not opt out is deemed to consent to electronic communications.
- Documents containing personal information can only be sent electronically via a secure system. The recipient must identify themselves before accessing their documents and comply with any other prescribed conditions.

Missing members: The requirement to send statements to former and/or retired members may be waived by the CEO of FSRA if they are satisfied the administrator has made reasonable efforts to locate the member. When assessing the reasonableness of the administrator's efforts, the CEO will consider:

- The amount or commuted value of the benefit;
- The number of searches and search methods used; and
- The cost of previous searches, and the expected cost of future searches.

The waiver remains in effect until the administrator receives the member's contact information. Once received, the administrator must promptly notify FSRA.

Pension division on relationship breakdown

Changes in membership status: The PBA's family law provisions are to be interpreted to take into account any change to an individual's status as a member, former member or retired member occurring after the family law valuation date (FLVD). References in a specific provision to an

individual's status therefore refer to the status at the date of any event or action relevant to that provision.

Valuing unavailable benefits: Specific rules are established for situations where pension assets are transferred out of the plan, or “otherwise cease to be available” as a result of prescribed circumstances after the FLVD but before a completed application for a statement of imputed value is made. These benefits are to be valued in accordance with the PBA as modified by the regulations or FSRA rules.

Lump sum transfers from successor plans: Where assets have been transferred to a successor pension plan after the FLVD but before a former spouse's lump sum transfer application is complete, the former spouse can apply to the successor plan for the immediate transfer of a lump sum. This transfer is available if the following criteria are satisfied:

- a) The spouses have separated with no reasonable prospect of reconciliation;
- b) No pension payment was due to the member from the original plan on or before the FLVD;
- c) A statement of imputed value has been obtained in relation to the original plan;
- d) The transfer is pursuant to an order under the Family Law Act, a family arbitration award or a domestic contract; and
- e) The order, award or contract expresses the amount to be transferred is expressed as either a lump sum or a proportion of the imputed value of the member's benefits under the original plan.

If the above criteria are met, the former spouse can apply to transfer their share from the successor plan to another registered plan, to a prescribed retirement savings arrangement, to another prescribed arrangement, or to leave their share in the successor plan to their credit (in prescribed circumstances, and with the agreement of the successor plan's administrator). Any amount in excess of the *Income Tax Act* transfer limits is paid to the former spouse as a lump sum.

Division of pension from successor plans: In cases where the assets of a retired member are transferred to a successor plan on or after the FLVD but before the application to divide the retired member's pension is complete, the former spouse may apply to the successor plan to divide the pension. If criteria a), c), d) and e) above are satisfied, the former spouse may apply to have the pension divided and their share paid directly to them. The spouse may make an irrevocable waiver of their entitlement to a joint and survivor (J&S) pension from the successor plan after payment of the first installment of the member's pension is due and before the pension is divided. Where such a waiver is not made, and the former spouse is entitled to both a J&S pension and a share of the member's pension, the former spouse may request that the administrator of the successor plan pay a single pension from the plan; the administrator may comply if the plan permits such a payment.

JSPP rules

Administration: The administrator of a single employer JSPP may be a pension committee with both employer and employee representation, a corporation, board or agency designated by statute, a prescribed entity, or a board of trustees appointed pursuant to the plan or trust agreement with 50% employer and 50% member representation.

Conversion: An employer may request CEO's consent to a transfer of assets from a single employer plan to a JSPP before the latter plan is registered under the PBA. If FSRA does not receive the application to register the JSPP within 90 days after the application for consent to the asset transfer is made, the application is deemed not to have been made. The CEO may also waive certain of the PBA's plan conversion rule if it is considered appropriate.

Documentation: Where a JSPP is administered by a board of trustees, the documents that create and support the plan must be set out by the board's powers and duties.

Bill 138

Introduced November 6th, Bill 138, the *Plan to Build Ontario Together Act, 2019*, also contains the following minor changes to the PBA:

- Removing reference to section 80.1, which was repealed in 2017; and
- Clarifying that, when a single employer plan with both DB and defined contribution (DC) benefits is being converted to a JSPP, the employer may elect to transfer the DC assets; if such a transfer is made it must comply with any prescribed requirements.

What's next?

Once each bill is passed, the PBA amendment summarized above will take effect either on the date the legislation receives Royal Assent, or on specific date(s) to be fixed by proclamation. To prepare for the legislation, plan administrators should:

- Consider whether and how they wish to communicate with active, former and retired members electronically, and make sure they have the appropriate processes, technology and protocols in place.
- Make sure they have done the appropriate searches for missing former and retired members, and have the documentation needed if applying for waivers from FSRA.
- Review their procedures for handling pension division requests, and prepare the necessary updates.

Administrators of single employer plans seeking to convert to JSPPs should also review the updated rules and requirements for such conversions.

In addition to monitoring the progress of Bill 132 and 138, there are other changes on Ontario's pension horizon:

- Starting January 1, 2020, interested DC plan administrators can allow their retiring members to receive LIF-like payments directly from the plan through a variable benefit account.
- Potential changes to rules, policies and guidance as a result of FSRA's ongoing review of FSCO materials.

For more details on these legislative changes, and how they may impact your plan, talk to your Buck consultant or contact the Knowledge Resource Centre at talktous@buck.com or +1 866 355 6647.

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