

FYI[®]

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COVID-19: Ontario provides defined benefit pension funding relief

This *FYI* discusses the [Ontario Regulation 520/20](#) (Regulation), which was filed September 21, 2020 and provides pension funding relief for sponsors of defined benefit (DB) pension plans impacted by COVID-19. Effective September 21, 2020, eligible DB sponsors can elect, subject to conditions, to defer employer contributions otherwise due between October 1, 2020 and March 31, 2021.

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Eligible plans/employers

The deferral is available for contributions relating to normal cost, the provision for adverse deviation (PfAD) in respect of normal cost, and special payments. It is available to single-employer, private sector, DB plans. It is not available to multi-employer plans, individual pension plans, designated plans, public sector plans, or jointly sponsored pension plans listed in subsection 1.3.1(3) of the General Regulation under the *Pension Benefits Act*. Specific pension plans, including those of Stelco Inc. and Essar Steel Algoma Inc., are likewise ineligible for relief.

In addition, an otherwise eligible DB plan will be considered an “ineligible plan” if any of the following apply:

- The employer has not paid any required contributions under a report filed before electing relief under the Regulation; or
- The employer has done any of the following prohibited activities on/after September 21, 2020 (except where required by an agreement executed before that date):
 - Declared/paid any amount, whether as a dividend or return on capital, on any issued and outstanding share capital;
 - Buy back, purchase or otherwise redeem any issued and outstanding share capital;

- Pay a bonus (discretionary or non-discretionary), in cash or otherwise, to any executive;
- Increase the compensation of any executive;
- Repay the principal of any debt or obligation of the employer in excess of previously scheduled or agreed to amounts;
- Enter into any related party transaction under terms and conditions less favourable than market; and/or
- Pay or credit any loan or advance for the benefit of any executive, beneficial owner, or related party thereto.

Deferral election

Employers electing to defer contributions must file an election with the Financial Services Regulatory Authority of Ontario (FSRA). The election must include the schedule of payments described in the Regulation, which must be prepared by an actuary. The election and schedule must be filed no later than the date on which the contributions for the first deferred month are due and must specify which payments are deferred. Once filed, the payment schedule cannot be amended, unless a new report is filed with a valuation date before March 31, 2021.

Pursuant to its [FAQs](#) on the Regulation, the election form and schedule will be available soon.

FSRA does not approve the election or payment schedule but will review the filings for compliance with the Regulation.

Updates

Updates containing the content listed in the Regulation must be filed with FSRA during the deferral period. The first such update must be prepared by the plan actuary as of the last day of the third month following the month the first deferred payment was to have been made and must be sent to FSRA within 30 days of that date. Subsequent updates are required on the last day of every third month and are due within 30 days of the last day of the third month. The requirement to provide updates ends when all deferred payments are repaid with interest, and FSRA is notified of this fact.

Updates must include a statutory declaration from an officer of the employer in a form satisfactory to FSRA – an example is found in the Appendix to the FSRA [FAQs](#). Employers who wish to use an alternate form should contact FSRA. The completed declaration must be provided to the plan administrator at least 15 days before the corresponding update is due.

Conditions and restrictions during deferral period

Once a deferral election is made, employers cannot perform any of the prohibited activities listed in the second bullet under “Eligible plans/employers” above. Employers or plan administrators are

advised to contact FSRA if they have questions about whether a particular circumstance constitutes a prohibited activity.

In addition, administrators cannot file plan amendments to increase benefits (including ancillary benefits) during the deferral period, unless the amendment is required by law or implements a benefit improvement agreed to in a collective agreement before September 21, 2020.

Repayment

Deferred contributions must be repaid with interest within the timeframes set out in the Regulation, with the last repayment due no later than March 31, 2022. However, an employer may repay the full outstanding amount of deferred payments, with interest, at any time.

Note that, if an employer does any of the following, the amount of any unpaid deferral payments immediately becomes due to the pension fund, with interest:

- Fails to comply with the payment schedule;
- Fails to provide the required statutory declaration;
- Performs a prohibited activity; and/or
- Fails to make any required payments in respect of the period between April 1, 2021 and March 31, 2022.

Information to plan members

The Regulation requires pension plan members, retirees and deferred members to be informed that the employer has elected to defer payments, and the date by which all deferred payments will be repaid with interest. This information must be included in annual or biennial pension benefit statements.

Next steps for DB sponsors

Eligible DB plan sponsors should review the cash contribution requirements for their DB plans against their financial obligations needed for their critical business operations. If a sponsoring employer's short-term cash-flow needs require it, requesting a deferral will allow DB plan contributions to be redirected to support ongoing business operations. Before making a decision regarding a potential deferral, plan sponsors should consult with their actuarial advisors and legal counsel to determine if a deferral election is appropriate for their specific circumstances.

For more information on this Regulation and its impact on your organization, talk to your Buck consultant or contact the Knowledge Resource Centre at talktocanada@buck.com or +1 866 355 6647.

For the latest from Buck about the COVID-19 crisis, please refer to:
<https://buck.com/ca/expertise/covid-19-key-considerations-for-employers/>.

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