

## Pensions Law

January 28, 2016

### Ontario Announces ORPP Design Details

The Ontario government has announced further design details for the Ontario Retirement Pension Plan (ORPP). Plan members will start making contributions on January 1, 2017, and the ORPP will start providing benefits in 2022. A Technical Bulletin has been released which is intended to assist employers planning for the ORPP. Of particular interest, the bulletin provides:

- details regarding who is covered by the plan and who is not;
- how benefit and contribution amounts will be calculated; and
- how those amounts may change over time.

#### Background

As discussed in our November 10, 2015, *ORPP and CPP: Pension Reform Update*, Ontario has been promoting both an expansion of the federal Canada Pension Plan (CPP) and the establishment of the ORPP. The federal government and the provinces have been discussing CPP reform. However, with no national consensus likely in the short term, Ontario is pressing on with the ORPP.

The Ontario government intends that by 2020, every eligible worker will be part of either the ORPP or a comparable workplace pension plan. Two sets of enabling legislation have already been passed and additional legislation concerning the design of the plan is expected this spring.

#### Who is Covered?

Employers will be required to pay contributions on behalf of workers “employed in Ontario” earning more than \$3,500 to a maximum earnings threshold of \$90,000, and to collect and remit contributions

from those workers. When fully implemented, the total contribution rate for both employer and employee will be 3.8% for a maximum contribution period of 52 years. The minimum age of participation is 18 and the maximum age is 70.

Persons will be considered “employed in Ontario” if they report to work, full or part-time, at any employer’s establishment in Ontario. This will include workers who are paid salary or wages from an Ontario-based employer, but who are not required to work at an employer’s place of business (e.g., they work from a home office).

The ORPP will also include non-resident workers earning more than \$3,500 who have taxable income for the purposes of Canadian and Ontario income tax (unless exempt under a tax treaty).

#### Who is Exempt?

As outlined in our November 10, 2015, *ORPP and CPP: Pension Reform Update*, employers with “comparable” workplace pension plans will be exempt from the ORPP. Comparable plans are registered pension plans that meet certain accrual or contribution thresholds. The Technical Bulletin provides further information on how the comparability test will be applied.

For existing pension plans with subsets or classes of employees receiving different benefits, the test will apply at the level of a subset of employees. This is also the case for multi-employee pension plans (MEPPs). For MEPPs offering both defined benefit (DB) and defined contribution (DC) plans, employers will have the option of being assessed under either the DB or DC threshold.

# Goodmans<sup>LLP</sup> Update

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An employee with a waiting period under a comparable plan will be required to be a member of the ORPP until the waiting period has ended.

Voluntary contributions will not apply when determining if a DC plan is comparable. Employers have until January 1, 2020 to make any necessary changes to enable them to meet the minimum total mandatory contribution rate of 8% for DC plans under the comparability test.

## *Opt-in and Opt-out Options*

Employers with comparable plans will have the option to opt in to the ORPP on or after January 1, 2020.

The ORPP will contain a religious exemption mirroring the CPP and will permit First Nations employers and employees to opt in and out of the plan. ORPP pensioners returning to work will also be permitted to opt in.

## **Benefit Amounts Could Decrease and Contribution Costs Could Increase**

### *Intended ORPP Coverage*

The ORPP is intended to provide members with income replacement of 15% of an individual's earnings (up to \$90,000) after 40 years of contribution. On retirement, the pension benefit would be calculated using average earnings over the years of contribution. Pensionable earnings will include both cash and non-cash earnings, including amounts beyond base salary-like bonuses and commissions. Benefits will be indexed both pre- and post-retirement. Survivor benefits will be payable to the surviving spouse of the ORPP member or their beneficiary or estate.

### *Sustainability of the ORPP*

The ORPP will be administered by the recently established Ontario Retirement Pension Plan Administration Corporation (AC), which will operate at arm's length from the government. The AC will be assisted and advised by the Office of the Chief Actuary (to be established). The ORPP will have a funding policy

designed to ensure sustainability of the plan over a 100-year period. The Chief Actuary will conduct actuarial valuations of the plan. The funded status of the ORPP will be measured by the difference between the current contribution rate and the sustainability rate, which is the lowest contribution rate required to keep funding sustainable in the long term.

Shortfalls or surpluses will trigger prescribed actions that may be taken by the AC's board of directors. *The details of these actions have not been disclosed, but they would include, in respect of a shortfall, "reversing any previous actions taken during a funding excess and reducing benefit indexation up to a certain limit." If the shortfall is not remedied by these steps, the AC may increase contribution rates by up to 0.2%.* It is not yet clear whether this will result in an increase of combined employer/employee rate from 3.8% to 4% or an increase of each of the employer and employees rates of 1.9% to a new combined rate of 4.2%.

Actions taken by the AC must be verified by the Chief Actuary before implementation. In the event of a more significant funding shortfall, the AC will work with the Chief Actuary to make recommendations to the government. Fundamental changes to the ORPP with a substantial impact on member benefits, which are not a direct result of funding policy adjustments, would require the consent of at least 60% of ORPP members.

## **Further Details**

The Technical Bulletin also contains information concerning calculation of survivor benefits, leaves of absence and workplace injury or illness, marriage breakdown, lump sum payments, early retirement, compliance and enforcement, appeals, information disclosure and plan reviews.

Please contact any member of our Pension, Benefits and Compensation Group for further information.