Goodmans LLP Update

Pension Law

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Pension Law Changes and Your Ontario Registered Pension Plan

There has been a flurry of activity in the pension regulatory world over the past several months. This article will set out some of the changes that you should be aware of and potential future changes to watch for.

Ontario changes

There are changes to Ontario law that will likely require plan amendments to be made. The new Ontario legislation has recently been partially passed into law, but there are several sections of the legislation that are not yet in force. In addition, there will be regulations filed at some point to provide more detailed rules and provide further clarification. Following is a brief discussion of some of the more noteworthy changes under the new legislation.

Immediate vesting

Vesting is an important pension standard—once a member is vested in his or her benefits under a pension plan, the member's benefit cannot be taken away upon the termination of employment of the member.

The new laws will require immediate vesting for plan members, whereas the prior rules required vesting within 24 months of plan membership. Accordingly, if your plan has a vesting period, amendments will be required to comply with the new rules.

Grow in benefits and partial wind ups

Under the current rules, where there is a wind up of a registered pension plan that provides certain enhanced early retirement provisions, members terminated as a result of the full or partial wind up are allowed to "grow in" to these benefits provided they meet the eligibility requirements (age plus years of service total 55 or more).

Under the new rules, effective July 1, 2012, any terminated member (unless terminated for cause) who meets the 55 points eligibility requirement will be entitled to grow in to these enhanced early retirement benefits. Multi-employer pension plans and jointly sponsored pension plans will be able to elect to be exempt from the grow in provisions.

The new rules also provide that partial wind ups will be eliminated at a date to be proclaimed in force.

Small benefits

Where a pension to be paid out to a member is sufficiently small, the rules allow the administrator to pay the benefit as a lump sum payment instead of as a pension. The new rules will increase the permissible threshold amount for such lump sum payments. Where your plan text refers specifically to the small benefit amount, plan changes would be required to increase the amount to the new permissible threshold.

Phased retirement

The tax rules were recently changed to allow defined benefit pension plans to provide for phased retirement. Phased retirement essentially permits plan members to commence to receive a pension under a plan while still continuing to accrue benefits under the plan.

Once proclaimed in force, Ontario law will permit plans registered in the province to include phased retirement provisions. Plans are not required to include phased retirement; however, under the new rules they may include this benefit.

Plan amendments

The new rules include changes to the way in which plan amendments may be affected. Under the current rules, pension plan administrators are not required to provide advance notice of plan amendments, unless the amendments are adverse in nature. Under the new rules, once proclaimed, administrators will be required to provide prior notice to members, former members and retired members of all plan amendments (subject to regulations being filed exempting some types of amendments).

Communications

The new rules, once proclaimed, will permit a plan administrator to communicate electronically (in compliance with the *Electronic Commerce Act, 2000*) with plan members, former members, retired members, and other interested persons, as long as the administrator has permission from the person to do so.

Asset transfers, plan mergers and prior sales

The new rules also address asset transfers between plans and plan mergers. The changes, once proclaimed, appear to address certain concerns regarding this complicated area of pension law. Specifically, with respect to asset transfers, the rules provide that if the parties reach an agreement and certain other requirements and prescribed conditions are met, then the regulator shall consent and the asset transfer may proceed. In addition, the new rules will allow a window of time (up to July 1, 2015) in which prior divestments can be addressed.

It should be noted, however, that much of the detail pertaining to these changes is to be provided through regulation.

Surplus sharing agreements on wind up

Under the new laws, an employer and members and former members and others entitled under a pension plan can enter into an agreement with respect to payment of surplus on the wind up of the plan under which a portion of the surplus may be paid to the employer, without having to establish entitlement based on the historical plan and trust provisions.

Will the recent proposed changes to federal pension regulations affect my Ontario registered plan?

The short answer is no. The proposed changes to the federal pension regulations will apply to federally registered pension plans.

There are changes to the federal investment rules proposed. Although the federal investment rules apply to Ontario registered pension plans, the proposed changes would not apply in Ontario unless Ontario laws were also changed. In the recent Ontario Budget, the government indicated that once the federal investment rules were amended, Ontario would examine their appropriateness to Ontario-registered plans.

The proposed changes to the federal rules would not eliminate the controversial 30% rule, which restricts a pension plan from investing the plan monies in the securities of a corporation to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation. In the Ontario budget, the government made specific reference to the 30% rule in the context of its commitment to examine the new federal investment rules once they are implemented.

Other considerations

Ontario is not the only province moving forward with pension law changes. To the extent that your plan contains members in other provinces, it is important for you to monitor changes in the law in such other provinces and ensure that your plan continues to provide the minimum standards in the other provinces to residents of such provinces.

This article highlights certain key changes that may impact your Ontario-registered pension plan. The Ontario government is also expected to release further proposed legislative changes that will affect Ontario registered pension plans. It is important for plan administrators to continue to stay apprised of all legislative and regulatory changes that may affect their plans and make plan amendments or changes to administrative practices, as required.

This article originally appeared on BenefitsCanada.com.

If you have any questions regarding these changes and how they may affect you, please feel free to contact any member of our Pensions, Benefits and Compensation Group.