

Goodmans^{LLP} Update

Ontario Pension Funding Relief Regulation

The Ontario pension regulator, the Financial Services Regulatory Authority (“FSRA”), [announced new funding relief](#) for defined benefit pension plans registered in Ontario. The Ontario government filed a new regulation on September 21, 2020, which will permit plan sponsors to defer pension contributions, for the months from October 2020 to March 2021. Employers who elect to take advantage of the deferrals will be subject to certain restrictions involving share dividend and redemption, executive compensation and loan transactions. All deferred contributions plus interest must be fully repaid by March 31, 2022.

Overview

[Regulation 520/20](#) (the “**Regulation**”) is intended to assist employers maintaining and supporting their day-to-day business operations by allowing pension contributions to be deferred, freeing up cash to support operational requirements. Under the Regulation, all contributions including normal cost, provision for adverse deviations in respect of the normal cost (PfAD) and special payments, may be deferred for the months from October 2020 to March 2021. No approval is needed from FSRA or from plan members.

All deferred contributions must be repaid with interest, in accordance with a prescribed schedule, ending up to seven months after the initial contribution was due, with the last deferred payment to be paid no later than March 31, 2022. The plan sponsor may repay the entire deferred amount at any time before the ultimate due date.

If a valuation report is filed on or before March 31, 2021, the Regulation will permit plan sponsors 120 days, instead of 60 days, to make a catch-up contribution, and make an update to the repayment schedule.

To take advantage of the deferral, a plan sponsor must file an election and schedule of payments with FSRA no later than the date on which the contributions for the month are due, and specify which payments are deferred. The schedule must include prescribed information and be prepared by an actuary.

During the deferral period, the plan administrator must file updates and a statutory declaration with FSRA every three months until the deferred payments, plus interest, have been fully repaid. In addition, notice of the deferral election must be included in the annual and biennial statements sent to plan members, retirees and deferred vested members.

If a contribution deferral is elected, the employer’s activities will be subject to restrictions until the deferred payments, plus interest, have been repaid. Unless the employer is obligated to do so pursuant to a contract entered into before September 21, 2021, it may not:

1. Pay dividends or return of capital on issued shares;
2. Purchase or redeem any issued shares;
3. Direct bonus payments to any executive;
4. Increase the compensation of any executive;
5. Repay any debt in excess of amounts previously scheduled;
6. Make any shareholder or executive loans; and
7. Enter into a related party transaction under terms and conditions that are less than fair market value.

Authors



Brian Sweigman
bsweigman@goodmans.ca
416.849.6908



John Alton
jalton@goodmans.ca
416.597.4101

Failure to comply with any of the Regulation requirements will result in the amount of deferred payments that remain unpaid, plus interest, becoming due. The contributions will no longer be treated as deferred and will be owing in accordance with the regular prescribed time period. Only private, single employer, defined benefit pension plans may take advantage of the contribution deferral under the Regulation. Multi-employer pension plans, public sector pension plans and specified jointly-sponsored pension plans are specifically excluded from the relief.

COVID-related Relief

To date, the government of Ontario and FSRA have addressed the impact of COVID-19 on pension plans by providing administrative relief in the form of extensions to required filings, imposing restrictions on commuted value transfers and providing guidance for actuarial valuation reports. However, this is the first funding relief provided to pension plan sponsors. It recognizes that employers may face a cash shortfall due to the pandemic and the need to prioritize business sustainability and the interests of plan members while the economy recovers.

There is no indication from FSRA that it will further extend deadlines for required filings. Annual filings, typically due June 30, are due by December 31, 2020, and plan administrators should complete all filings before then to avoid administrative monetary penalties.

The government of Ontario also filed [Regulation 521/20](#), which confirms that administrative monetary penalties may be levied for breaches of certain provisions discussed above related to an election for deferrals of contributions.

For further information concerning these developments, please contact any members of the [Pensions and Benefits Group](#).

All Updates are available at www.goodmans.ca. This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our Pensions and Benefits Group.

© Goodmans LLP, 2020.