

Ontario - New immediate vesting and other new rules

In the [April 2012 issue of Legislation matters](#), we informed you that the Ontario Finance Minister, Mr. Dwight Duncan, announced in his 2012 budget the intent to proclaim the following provisions effective July 1, 2012:

- ▶ Immediate vesting of pension benefits.
- ▶ Elimination of future partial wind-ups.
- ▶ New measures on grow-in benefits, making them available to all eligible members under defined benefit pension plans that are terminated other than for cause.

On April 30, 2012, the Ontario government posted draft regulatory amendments for consultation in order to introduce, among other things, the above mentioned provisions. These draft regulatory amendments are expected to be proclaimed into effect on July 1, 2012 along with corresponding amendments to the *Pension Benefits Act* in Bill 236, Bill 120 and Bill 173. Comments were due by June 1, 2012.

The following main amendments are expected to come into effect on July 1, 2012:

- ▶ Immediate vesting and locking-in of pension benefits.

Small amount – A terminated member entitled to a payment under the new threshold for a small pension payout or for the commutation of 25% of pre-1987 benefits will be entitled to require the plan administrator to pay such amount into a registered retirement savings arrangement by delivering a request to the plan administrator within the prescribed period.

Currently, the threshold for a small pension payout is equal to the annual benefit at normal retirement date of not more than 2% of YMPE in the year of termination. This limit will now be increased to an annual benefit at normal retirement date of not more than 4% of the YMPE, or a commuted value of the benefit of less than 20% of the YMPE, in the year of termination.

The commutation of 25% of pre-1987 benefits will continue to apply.

- ▶ Plan administrators and the Superintendent of Financial Services will be allowed to use electronic means to send notices, statements and other records with consent of the recipient.
- ▶ The Superintendent will be allowed to order a wind up (references to partial wind ups will be removed as of July 1, 2012) in prescribed circumstances in addition to circumstances listed under the *Pension Benefits Act*.

Prescribed circumstances under which the Superintendent may order the wind up of a plan will be:

- The plan has no active members – i.e., the plan has only former/retired members and beneficiaries who are not members.
- Members no longer accrue pension benefits or ancillary benefits and employees are no longer permitted to become members of the plan under section 31 of the PBA (Eligibility for membership).
- ▶ New section 74 of the *Pension Benefits Act* will extend payment of grow-in benefits to any eligible member whose plan is fully wound up (effective date determines eligibility – wind up being on or after April 1, 1987) or whose employment is terminated by an employer on or after July 1, 2012, other than as a result of wilful misconduct or such other circumstances as may be prescribed.

The *Pension Benefits Act* allows additional “activating events” to be prescribed that could trigger grow-in benefits. This includes circumstances that constitute where an employer has given notice of termination to an employee and the employee subsequently decides to terminate his employment within the 60 day period before the termination date specified in the written notice of termination given to him.

Regulation provides for the prescribed circumstances other than for cause (i.e., wilful misconduct, disobedience or wilful neglect) for which grow-in benefits do not have to be paid – i.e., not an activating event. These circumstances are the following:

- The member is an employee who was hired on the basis that his employment is to terminate on the expiry of a definite term or on the completion of a specific task.
- The member is an employee who is a construction employee, as per the Ontario *Regulation 285/01* made under the *Employment Standards Act, 2000*.
- The member is an employee who is on temporary lay-off, as per subsection 56(2) of the *Employment Standards Act, 2000*.

Newly created section 74.1 of the *Pension Benefits Act* will allow jointly sponsored pension plans (JSPPs) and multi-employer pension plans (MEPPs) to file an election to opt out of providing grow-in benefits.

- ▶ There are other amendments in order, for example, to clarify the surplus payment rules, create the class “retired members” for various purposes, reflect changes to the *Income Tax Act* (Canada) with respect to Individual Pension Plans and make adjustments to the various statements to reflect, among other things, the immediate vesting rule.

Standard Life is reviewing these new rules and evaluating their impact on the pension plan texts, among other things. We will communicate with our plan sponsors regarding this.

British Columbia - Major pension reform

On April 30, 2012, the government of British Columbia introduced Bill 38 – *2012 Pension Benefits Standards Act*, which is based on the recommendations from the 2008 “Report of the Joint Expert Panel on Pension Standards (JEPPS)”.

The proposed legislation is a complete rewriting of the current PBSA with a principles-based regulatory approach designed to reduce administrative costs, enhance members’ rights, and provide private sector B.C. employers with greater pension design options (e.g., target benefit pension plans) so that more British Columbians will have access to pension income when they retire.

Bill 38 was passed by the government of British Columbia on May 31, 2012. However, it is not in force and cannot be applied yet. Bill 38 will come into force when the accompanying Regulations are written and proclaimed into law.

It is expected that a similar Bill will be introduced in Alberta in the near future.

Both the Alberta and the new B.C. legislation and regulations are not expected to come into force before January 1, 2013. We will keep you posted.

Bill 38 - Explanatory notes

This Bill repeals and replaces the *Pension Benefits Standards Act* to modernize the law with respect to pensions in British Columbia and to harmonize British Columbia's pension legislation more closely with that of Alberta. The new Bill provides the following:

- ▶ immediate vesting of members' pension rights;
- ▶ administrators of a single employer plan are required to provide the fund holder a summary of contributions, such as a form 7 already applicable in Ontario and Alberta;
- ▶ more flexible pension plan structures in addition to defined benefit plans and defined contribution plans;
- ▶ plan administrators are required to ensure that plans have governance policies and, for defined benefit plans or target benefit plans, funding policies;
- ▶ enhanced disclosure requirements;
- ▶ clarification of the roles and responsibilities of administrators, participating employers and fund holders;
- ▶ uniformity and certainty in relation to the content of plan documents;
- ▶ members allowed to suspend membership in a plan;
- ▶ administrative penalties for non-compliance;
- ▶ distinction between collectively bargained multi-employer plans and non-collectively bargained multi-employer plans and between actuarial excess and surplus;
- ▶ former plan members enabled to access locked-in funds in circumstances of financial hardship;
- ▶ administrators allows to establish solvency reserve accounts;
- ▶ superintendent is empowered to appoint a plan administrator or designate an actuary;
- ▶ refunds of optional ancillary contributions are permitted;
- ▶ plans with no active members are allowed to continue with the superintendent's consent;
- ▶ plans permitted to force out small accounts;
- ▶ deferred members and, in prescribed circumstances, retired members are allowed to select portability options on plan termination;
- ▶ a framework for jointly sponsored pension plans;
- ▶ a new framework for the regulation of multi-jurisdictional pension plans.

Other legislative updates

In the January 2012 issue of *Legislation matters*, we informed you that the Nova Scotia government passed Bill 96 in December 2011 introducing a new law on pension plans and replacing the current *Pension Benefits Act*. Bill 96 is not yet in effect.

On April 26, 2012, Bill 62 – *Pension Benefits Act (amended)* has been introduced. This Bill amends the existing *Pension Benefits Act* and its unproclaimed replacement (i.e., Bill 96) to require that the annual written statement sent to members of a pension plan also be sent to former members and retired members. Bill 62 also provides that the annual statement that provides defined benefits also contains information about the investment performance and solvency of the pension fund and how amendments to the pension plan and decisions made by the employer in the preceding year are expected to affect the pension plan.

Bill 62 is a private Member's Bill, introduced by a member of the opposition. It is reasonable to expect that Bill 62 will not be passed by the Nova Scotia legislature.

PEI - Introduction of the *Pension Benefits Act*

On May 17, 2012, the PEI Government introduced Bill 41, the *Pension Benefits Act*.

Bill 41 largely follows the new *Nova Scotia Pension Benefits Act* (Bill 96). For example, vesting will be immediate.

Bill 41 has not been passed yet. We will provide you with more details when Bill 41 comes into force.

New Brunswick introduces a new pension model

On May 31, 2012, the New Brunswick government introduced pension legislation to support a new pension model called “**Shared Risk Pension Plans**”, through Bill 63, *An Act to Amend the Pension Benefits Act*.

The model was developed by the NB Task Force on Protecting Pensions in collaboration with a number of union leaders and has apparently received support from several public and private sector plan sponsors, including unions and the New Brunswick government.

The Shared Risk Pension Plan is based on the Dutch model.

We will provide you more details on this new pension model in a future issue of *Legislation matters*.