

AN EMPLOYER'S GUIDE TO THE ONTARIO RETIREMENT PENSION PLAN (ORPP)

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Faced with concerns that Ontarians are not saving enough to sustain a comparable standard of living in retirement, Ontario introduced the ORPP as a measure to fill the retirement savings gap. Simply, the ORPP is an Ontario-only supplement to the Canada Pension Plan (CPP) and is intended to provide a source of retirement income to augment CPP, Old Age Security (OAS) and any personal savings. It has been described as an enhancement to the CPP and is said to be modeled on the strengths and principles of the CPP. ORPP is an incremental financial obligation for employers as it would require equal contributions to be shared between employers and employees. Ontario has passed legislation that requires the Province to introduce a law setting out the detailed provisions of the ORPP. To this point, the features and details of the ORPP have been based on Technical Bulletins and news releases from the Ontario Ministry of Finance.

We have previously written on the introduction of the ORPP, which can be found [here](#), and subsequently discussed the framework and operation of the ORPP [here](#) which was to come into effect January 1, 2017. On February 16, 2016, Ontario's Finance Minister Charles Sousa announced that the province would delay premium payments until January 1, 2018 for large employers, although registration with the ORPP will still commence on January 1, 2017. This document is intended to be a practical guide that will allow employers to assess their current situation and take steps to prepare before the deadline for ORPP enrolment.

Employee Participation

All employees in Ontario, excluding those operating in federally-regulated sectors (such as banks, airlines and railways), will be part of the ORPP, unless they do not meet the minimum earnings threshold or are participating in a comparable workplace pension plan.

For the purposes of membership in the ORPP, a person would be considered employed in Ontario if he or she is either required to report to work at an establishment of the employer in Ontario, or is not required to report to work at an establishment of the employer in Ontario but is paid by the employing establishment in Ontario. The latter would encompass, for example, circumstances where an employee's contract states that he or she works from a home office and the location of the payroll department or records is in Ontario.

Retirees collecting ORPP retirement benefit who return to paid employment would be eligible to opt-in to the ORPP and make pension contributions on the condition that their ORPP retirement benefit payments be suspended until they leave the workforce.

Exceptions to Employee Participation

Employees who are working in Ontario who are not residents of Canada for tax purposes and who are exempt from tax under a tax treaty would also be exempt from contributing to the ORPP. However, non-resident workers who have taxable income that is not sheltered by a treaty will be included in the ORPP.

Exemptions are also available for individual members of a religious order who have taken a vow of perpetual poverty, and their remuneration is paid to the order; or they have self-employed earnings, and are members of a religious sect that opposes the acceptance of any public/private benefits, and that makes provision for the support of dependent members.

Employer Participation

Employer participation in the ORPP is mandatory, unless the employer has sponsored for all of its employees a comparable workplace pension plan. Where the comparable pension plan covers only a portion of the workforce, the employer must participate in the ORPP in respect of the non-plan members.

As a general rule, if the employer's workplace pension plan satisfies the comparability test but has a waiting period before an employee can participate, employers and employees will be required to participate in the ORPP for the duration of the waiting period. There has been no indication that there will be any exception for short waiting periods such as a typical 3 month "probation" period.

A number of options are available based on the employer's circumstances. Employers that currently have in place a comparable plan based on the criteria discussed below will not be required to enroll in the ORPP. Employers sponsoring a pension plan that is not a comparable plan will be required to enroll in the ORPP or modify their existing plan in order to make it a comparable plan. Finally, employers currently without a workplace pension plan will be required to enroll in the ORPP or set up a comparable plan before the applicable entrance wave date. Below is a breakdown of how your organization may be affected depending on your current arrangements.

Employers Without a Workplace Pension Plan

Employers who currently do not offer a workplace pension plan will be obligated to enroll in and contribute to the ORPP for all employees in Ontario before the commencement date of their applicable wave. The commencement dates are based on the size of the employer's workforce and are detailed below under

"Enrolment Schedule".

Alternatively, employers without a workplace pension plan can introduce an arrangement that qualifies as a comparable pension plan prior to the commencement date of the applicable wave.

Employers with Group Registered Retirement Savings Plans and Deferred Profit Sharing Plans

Group Registered Retirement Savings Plans (RRSP) do not require employer contributions, although employers may elect to contribute. Similarly, only employers contribute to Deferred Profit Sharing Plans (DPSP) and contributions may be based on other factors. Accordingly, neither group RRSPs nor DPSPs qualify as comparable plans for the purposes of the ORPP. Employers currently sponsoring only a group RRSP or DPSP will be required to participate in the ORPP, or alternatively, introduce an arrangement that qualifies as a comparable plan.

Employers with Defined Benefit Plans, Defined Contribution Plans or Hybrid Pension Plans

A number of different options are available to employers that currently sponsor defined benefit (DB) pension plans or defined contribution (DC) pension plans. Employers will have to weigh the pros and cons of each plan against ORPP to decide how to proceed. The choices include whether they wish to maintain the status quo if the current plan is comparable, modify the existing plan to make it a comparable plan, or enroll in the ORPP (with or without continuing current arrangements).

An employer sponsored earnings-based DB plan will be a comparable plan if the annual benefit accrual rate is at least 0.5 per cent of pensionable earnings. The 0.5 per cent accrual rate minimum comparability threshold also applies to flat-benefit DB plans and is calculated using a predetermined formula.^[1]

An employer sponsored DC plan will be a comparable plan if the plan has a minimum total contribution of 8 per cent of base salary earnings, where employers are required to contribute at least 50 per cent of the total minimum contribution, being at least 4 per cent. The 8 per cent minimum contribution comparability threshold also applies to flat-dollar DC plans (contributions based on hours worked) and is calculated using a predetermined formula.^[2] It should be noted that voluntary employee pension plan contributions will not be taken into account in calculating the DC contribution for the purpose of the ORPP comparability test.

The minimum comparability threshold for an employer sponsored hybrid plan is calculated using a predetermined formula.^[3]

Employers Sponsoring a Single Pension Plan Covering More Than One Group Of Employees

Employers that sponsor a single pension plan that offers different benefits to various groups or classes of employees will be required to determine comparability on a class by class basis. These plans may provide

different benefit formulas, contribution rates and accrual rates depending on the group of employees in question. In assessing comparability for these plans, the threshold test must be applied for each group or subset of employees that are subject to the same contribution or benefit structure.

Employers Participating in Multi-Employer Pension Plans

Multi-employer pension plans (MEPP), which can be a DB, DC or a combination of both types of plan, involve a pension plan where two or more unrelated employers participate and contribute to the same pension fund. The ORPP comparability test will be applied to an employer's collective bargaining agreement and/or employee agreements at the employee sub-set level, as defined by the MEPP governing documents. The comparability threshold parameters established for DB and DC plans would be applied when assessing comparability of a MEPP and employers would have the option to assess the pension benefit comparability using either the DB accrual or DC contribution rate threshold. This apparent flexibility reflects the fact that MEPPs typically allow for the reduction of defined benefit accruals where the pension fund is insufficient to support the payment of promised benefits. In the event that a MEPP does not satisfy the comparability test, the employer will need to assess its options in order to comply with and participate in the ORPP. This area may give rise to disputes between employers and their unionized employees as the parties explore the interplay between collective agreements and the obligation of employees to make ORPP contributions.

Opt-in for Employers With a Comparable Workplace Pension Plan

Employers that currently have in place a comparable workplace pension plan are nonetheless able to opt-in to the ORPP in wave four of the ORPP enrolment schedule or at any time thereafter.

Contributions and Benefits

Age

The ORPP's minimum and maximum age of participation for persons employed in Ontario is 18 and 70 years old, respectively. Thus, employers would not be required to contribute to ORPP for employees under the age of 18 years or those over age 70. The maximum period during which a member could contribute is 52 years. Members are able to receive ORPP retirement benefit payments at age 65 with actuarially adjusted benefits payable on early or late commencements between age 60 and 71.

Earnings Threshold and Contribution Rates

The minimum amount of earnings an ORPP member has to earn before they and their employer would be required to start making pension contributions and before they can accrue a benefit is the same as the CPP minimum earnings threshold, which is currently \$3,500. Employers should note that pensionable earnings for

the purposes of this minimum include both cash and non-cash earnings, including amounts beyond base salary such as bonuses and commissions.

The maximum earnings at which an ORPP member and employer stop contributing to the plan is \$90,000 (in 2017 dollars), indexed to the average growth of wages and salaries as determined by Statistics Canada.

Employers and employees will begin contributing to the ORPP pursuant to the applicable Enrolment Schedule detailed below. Contribution rates for both employers and employees will start at 0.8 per cent and will gradually increase to 1.9 per cent on an employee's annual earnings up to the maximum of \$90,000. The maximum annual ORPP contribution for each of the employer and employee would be \$1,643.50 (before indexation).

Leaves of Absence and Workplace Injury or Illness

Ontario's *Employment Standards Act, 2000* (ESA) and the *Workplace Safety and Insurance Act, 1997* (WSIA) identify a number different types of leaves during which an employer may be required to continue making pension contributions on behalf of an employee. Pregnancy, parental and family caregiver leaves are typical categories of such leave.

Members of the ORPP would be permitted to opt-in and elect to continue making contributions to the ORPP during leaves that are protected under the ESA and WSIA. If a member opts-in, the employer would be required to continue to pay the employer's portion of the contribution during the leave. In these circumstances, the employee and employer's contributions would be based on the employee's earnings prior to the leave.

Benefits

Benefits under the ORPP will begin to be paid in 2022 to retiring members starting at age 65. The annual benefit accrual rate under the ORPP will be 0.375% of average pensionable earnings over the member's career.

Enrolment Schedule

As discussed previously [here](#), enrolment in and contribution to the ORPP will occur in "waves" based on the size of the employer beginning with large employers.

First Wave

Large employers with 500 or more employees who are without a registered workplace pension plan as of August 11, 2015, will be required to register with the ORPP by January 1, 2017 and begin contributing to the ORPP commencing January 1, 2018. (This date and those below are based on the government's February 16,

2016 postponement announcement).

Second Wave

Medium employers with 50 to 499 employees who are without a registered workplace pension plan as of August 11, 2015 will be required to register and begin contributing to the ORPP commencing January 1, 2018.

Third Wave

Small employers with 50 or fewer employees without a registered workplace pension plan as of August 11, 2015 will be required to register and begin contributing to the ORPP commencing January 1, 2019.

Fourth Wave

An Ontario employer of any size which is one: (i) with a non-comparable workplace pension plan in place as of August 11, 2015; or (ii) that is in the process of registering a non-comparable pension plan as of August 11, 2015; or (iii) has employees who do not participate in an employer sponsored workplace pension plan, will be permitted to defer ORPP enrolment until January 1, 2020. These employers must have modified their workplace pension plan to meet the criteria of a comparable pension plan or must begin contributing to the ORPP commencing January 1, 2020.

Compliance and Enforcement

The ORPP Administration Corporation (ORPP AC) will be responsible for administering the ORPP including compliance and enforcement using various tools, including audits. ORPP AC will also be charged with investing the funds of accumulating contributions. Decisions by ORPP AC may be appealed to an independent adjudicative tribunal that would operate at arm's length from the ORPP AC. The province announced the initial directors of ORPP AC in November 2015. Saäd Rafi was appointed as CEO of the corporation in January 2016.

What's Next?

The ORPP AC will begin contacting all Ontario employers early this year in connection with the ORPP.

by George Waggott, David Wentzell and Ehsan Wahidie, Student-at-Law

¹ $[(\text{Monthly dollar benefit accrual} \times 12) / (\text{Maximum hourly wage rate} \times 2080\text{hours/year})] \geq 0.5\%$ accrual rate.

² $[(\text{Monthly dollar contributions} \times 12) / (\text{Maximum hourly wage rate} \times 2080\text{hours/year})] \geq 8\%$ accrual rate.

³ $[(\text{Annual defined benefit accrual rate}/0.5\%) + (\text{Annual defined contribution rate}/8\%)] \geq 1$

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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