EMPLOYERS: BE PROACTIVE AND PLAN FOR THE ONTARIO RETIREMENT PENSION PLAN

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As early as January 2017, employers and employees may be subject to the new Ontario Retirement Pension Plan ("ORPP"). The ORPP will be a provincially-managed pension plan in which mandatory employee contributions through payroll deductions will be matched by employers. All employees in Ontario, excluding those employed in federally-regulated sectors and members of comparable workplace pension plans, must be members of the ORPP. The Ontario government wants to include the self-employed in the ORPP. This is currently prohibited by the federal *Income Tax Act*.

Framework of the ORPP

The stated goal of the ORPP is to ensure that every employee in Ontario will be part of either the ORPP or a comparable workplace pension plan by the year 2020. The ORPP is being designed to augment the existing pillars of retirement savings arrangements of employees: the Canada Pension Plan, workplace pension plans and personal savings. The benefits paid out by the ORPP to retired members will vary based on their years of participation, total contributions and salary while in the plan. The ORPP contributions will be held in trust and will not form part of general government revenues. The administrative costs of the ORPP will be borne by the plan, not by taxpayers. The ORPP is to be administered and invested by an independent and professional Board of Directors and will be subject to a legislative review within 10 years.

Operation of the ORPP: Enrollment and Contribution Schedule

ORPP contribution rates are to be phased in from the time of an employer's scheduled enrollment. The first year contribution rate for employees and employers is to be 0.8% of annual earnings. Second year rates are to be 1.6% of earnings. For years three and following, employer and employee contributions will be fixed at the top rate of 1.9% of annual earnings up to $90,000.

Employers with a registered workplace pension plan in place or in the process of registration as of August 11, 2015, will be permitted to defer ORPP enrollment until "Wave 4" in 2020.

The first wave of enrollment in the ORPP will require large employers with 500 or more employees who are without registered workplace pension plans to contribute to the ORPP commencing January 1, 2017.

The second wave provides that employers with between 50 and 499 employees who are without registered workplace pension plans will begin contributing to the ORPP commencing January 1, 2018.

The third wave of enrollment in the ORPP requires small employers with 50 or fewer employees without workplace pension plans to contribute commencing January 1, 2019.

The fourth wave will require employers with a workplace pension plan as of August 11, 2015, that is not modified to meet the criteria of a comparable workplace pension plan to contribute to the ORPP on January 1, 2020.

Exemptions from the ORPP

Participation in a "comparable" workplace pension plan will exempt employees and employers from enrollment in the ORPP.

1. Comparable Pension Plans

The Ontario government has described a "comparable plan" as a registered pension plan subject to federal and provincial government regulation that:

- provides participants with a predictable stream of income for life;
- provides some security that participants won't outlive their savings;
- requires contributions from employers to ensure fairness; and
- aims to replace up to 15% of pre-retirement income.

In a technical bulletin published on August 11, 2015, (the "Technical Bulletin") Ontario outlined the minimum thresholds for comparable pension plans of different types.

a) Defined Benefit Pension Plans

In a defined benefit ("DB") plan, a member is entitled to a set retirement income that is paid for life based on a predetermined formula. Factors taken into account by the formula include salary, length of employment, and years of service. DB plans can be funded wholly by the employer or by contributions from both the employer and plan members. To be considered a comparable pension plan, a DB plan must match or exceed the benefits being offered to employees through the ORPP.

The Technical Bulletin establishes the minimum comparability threshold for DB plans to be an annual benefit accrual rate of at least 0.5% of earnings. The accrual rate is the rate at which an employee builds up retirement income in a pension plan over time. The accrual rate is multiplied by the employee's earnings to calculate how much pension the employee will eventually be entitled to under the DB plan.

b) Defined Contribution Pension Plans

Under a Defined Contribution ("DC") plan, a fixed amount of money is paid into an account for the benefit of the employee. Contributions can be made solely by the employer or by both the employer and the employee. The retirement income of the employee is dependent upon the accumulated value, at retirement, of contributions and investment returns in the employee's account.

To meet the criteria of a comparable workplace pension plan published in the Technical Bulletin, a DC plan must have a minimum annual total contribution of 8% of base salary earnings and employers are required to contribute at least 50% of the total contribution. Recognition of DC plans as "comparable" represents a shift from the original government proposition that only DB plans would be considered comparable.

c) Pooled Registered Pension Plans

Pooled Registered Pension Plans ("PRPPs") were recognized in Ontario earlier this year with the passage of enabling legislation. The Technical Bulletin discloses that the government continues to consult with pension experts with the objective of establishing a comparability threshold for PRPPs.

d) Other retirement savings plans

Group Registered Retirement Savings Plans ("GRRSPs") and Deferred Profit Sharing Plans ("DPSPs"), while they are similar in structure to DC plans, are not considered comparable pension plans under the ORPP.

Takeaway for Employers

Employers have a window of opportunity to review and strategically tailor their retirement pension plan to their broader business plan before the deadline for enrolment in the ORPP. Employers in Ontario should assess their chosen retirement income plans to determine whether they qualify as an exempted comparable workplace pension plan under the ORPP. Employers should also then consider whether, from a business perspective, it is advantageous for them to modify their existing pension plans or implement a comparable workplace pension plan rather than contribute to the ORPP. Modifications must be made prior to the deadline for amending existing pension plans on January 1, 2020, and implementations must be completed before the employer's scheduled entrance into the ORPP. Legal advice can be especially helpful for employers seeking to make sound changes to existing retirement pension plans while navigating the resulting pensions, collective bargaining and employment concerns. Employers should take note that by proactively implementing a strategy with respect to pension planning under this new regime, an employer's retirement pension plan can further their long term business strategy.

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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.