The Latest Ontario Retirement Pension Plan Developments – A Primer for Employers


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First announced as part of the 2014 Ontario Budget, the Ontario Retirement Pension Plan ("ORPP") is a new, provincially-managed pension plan for employees working in Ontario initially scheduled to take effect in 2017. On February 16, 2016, Ontario Finance Minister, Charles Sousa, announced a one-year implementation delay (to 2018) to allow for negotiations with the federal government regarding a possible enhancement to the Canada Pension Plan ("CPP"), and then on April 14 2016, the province introduced the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016.

"EMPLOYERS THAT FAIL TO DEDUCT OR REMIT CONTRIBUTIONS WILL BE CHARGED INTEREST ON LATE PAYMENTS AND MAY BE SUBJECT TO FINES."

In many ways the ORPP is similar to the CPP – both require contributions from employees[1] through payroll deductions, as well as matching contributions from employers. While possible expansion of the CPP continues to cast some doubt on the future of the ORPP, at least for now public pension reform in Ontario remains advertised as a two-pronged approach – ORPP implementation occurring simultaneously with CPP reform.

What retirement benefits will the ORPP provide?

Starting in 2022, a retiree who has made contributions to the ORPP will be eligible to draw retirement benefits at age 65, with options to receive adjusted benefits as early as age 60 or as late as age 70. The value of benefit payments will vary depending on the employee's earnings and the number of years of contributions. However, the plan was designed to provide up to a 15 per cent income replacement rate for persons who have contributed over a 40-year period. Retirement benefit payments will be indexed to inflation. The ORPP also provides for survivor benefits to a spouse, beneficiary or estate.

How much will the ORPP cost?

Once fully implemented, the total contribution rate per employee will be 3.8 per cent of employment income up to $90,000 per year. The first $3,500 of income will be exempt from the ORPP contributions, as will all income earned by an employee less than 18 years of age or over the age of 70. The 3.8 per cent contribution will be split evenly between employer and employee – 1.9 per cent being contributed from each, with the employer being required to collect and remit employee contributions.

When will ORPP take effect?

The following chart illustrates the rollout of employer contributions to the ORPP, including the most recent changes announced by the government:

TYPE OF EMPLOYER	2017	2018	2019	2020	2021
Large Employer (500+ employees) without an existing registered pension plan	–	0.8%	1.6%	1.9%	1.9%
Medium Employer (50-499 employees) without an existing registered pension plan	–	0.8%	1.6%	1.9%	1.9%
Small Employer (49 or fewer employees) without an existing registered pension plan	–	–	0.8%	1.6%	1.9%
Employers (all sizes) with an existing registered pension plan which does not meet the "comparability test" (described below)	–	–	–	1.9%	1.9%

Employers that fail to deduct or remit contributions will be charged interest on late payments and may be subject to fines.

Exemption for "Comparable" Pension Plan

Employers and employees who participate in a "comparable" pension plan are exempted from mandatory participation in the ORPP. For a pension plan to qualify as comparable it must be a registered pension plan – that is, a plan subject to federal and provincial government regulation, and it must satisfy a prescribed minimum contribution threshold. An employer with a comparable plan may still choose to opt-in to the ORPP starting in 2020.

One kind of plan, known as a Defined Benefit plan ("DB plan"), pays a specific monthly retirement benefit calculated according to a formula set out in the plan. For a DB plan to be considered comparable, the retirement benefit formula must provide for an annual accrual rate equal to at least 0.5 per cent of the employee's earnings.

Another kind of plan, known as a Defined Contribution plan ("DC plan"), provides for contribution of a fixed amount into an established account in the employee's name. The eventual

[1] Definition of employed in Ontario: A person would be considered employed in Ontario if they are required to report for work at an establishment of the employer in Ontario, or if not so required, if the establishment of the person's employer from which the person's remuneration is paid is in Ontario.

retirement benefit is based on the amount of money in the plan on retirement, and this is a product of how much has been contributed and how well the investment has performed. For a DC plan to be considered comparable there must be a minimum total contribution rate of 8 per cent of base earnings, at least half of which must be contributed by the employer. An employer with a non-comparable DC plan will have until 2020 to convert the plan into a comparable plan; otherwise the employer will be required to make ORPP contributions.

Similar comparability criteria exist for other kinds of pension plans, including a Multi-Employer Pension Plan and Pooled Registered Pension Plan.

The exceptions are Group Registered Retirement Savings Plans and Deferred Profit Sharing Plans. The Government of Ontario has already determined these types of plans are not 'comparable' to the ORPP regardless of the rate of contribution.

Other Exclusions

As a provincial initiative, the ORPP will exclude federally-regulated employers (e.g., employers in the banking, inter-provincial transportation, or telecommunications sectors). Self-employed individuals will also be excluded from participation in the ORPP, for now. Other exemptions exist for certain persons employed as a member of a religious order or sect and for First Nations employees working on a reserve. An employee in receipt of ORPP retirement benefits who returns to paid employment may opt back into the ORPP and suspend benefit payments; however, re-enrollment is not mandatory.

Next Steps for Employers

A federally-regulated employer, self-employed individual or employer which already has a comparable registered pension plan does not need to take any immediate action.

However, an employer with a non-comparable pension plan, or no pension plan at all, should not wait to start exploring options. Waiting until the ORPP becomes law may eliminate potentially money-saving initiatives. Further, although contributions do not begin until January 1, 2018, the process of verifying comparable workplace pension plans and employer enrollment begins in January 2017.

Best practice suggests conducting an **assessment of the risks and benefits of establishing a comparable pension plan versus contribution to the ORPP.** This includes consideration of any existing workplace arrangements (such as a collective agreement or employment contract) which might prohibit the establishment of a pension, or amendment of an existing pension arrangement, and whether the employer will have a right to set off amounts contributed to the ORPP against contributions to an existing plan.

We will continue to monitor ORPP developments, and report back to readers. In the meantime, to learn more about the ORPP, how it may impact your workplace, and steps you might take to minimize liability, contact the employment law experts at Sherrard Kuzz LLP.

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