

Background

Regulatory amendments are required to implement grow-in and wind up provisions of the *Pension Benefits Act* (the Act), as amended by Bill 236, the *Pension Benefits Amendment Act, 2010*, Bill 120, the *Securing Pension Benefits Now and for the Future Act, 2010*, and Bill 173, the *Better Tomorrow for Ontario Act (Budget Measures)*, which received Royal Assent on May 18, 2010, December 8, 2010, and May 12, 2011, respectively.

The amendments to the Act, which come into effect on July 1, 2012, require pension plans to provide grow-in benefits for members whose age plus service total at least 55 and whose employment is ended by their employer. The new section 74.1 allows the employers and members of jointly sponsored pension plans (JSPPs) and the administrators of multi-employer pension plans (MEPPs) to elect to opt out of providing grow-in benefits for their plan members.

Constructive feedback from interested stakeholders is welcome, particularly regarding the additional activating events that would give rise to eligibility for grow-in benefits and the circumstances under which termination should not be considered an activating event.

Grow-in provisions

The amendments to section 74 of the Act, once proclaimed, extend grow-in benefits to any eligible member whose plan is fully wound up or whose employment is terminated by an employer, other than as a result of “wilful misconduct” or such other circumstances “as may be prescribed”. The amendments also allow additional “activating events” to be prescribed that could trigger grow-in benefits.

Proposed prescribed activating events

For the purpose of s. 74 (1), paragraph 3, an “activating event” would also include the circumstances where an employer has given notice of termination of employment to an employee and that person decides to end his or her employment within 60 days in advance of the termination date.

The intent is to ensure that a member does not lose entitlement to grow-in benefits by leaving a job shortly before the termination date. For example, a member may leave in advance of the termination date to pursue employment elsewhere.

Proposed circumstances in which termination is not an activating event

Under s. 74 (1.1), termination “is not an activating event if the termination is a result of wilful misconduct, disobedience or wilful neglect of duty by the member that is not trivial and has not been condoned by the employer or if the termination occurs in such other circumstances as may be prescribed”.

Other circumstances in which termination would not be an activating event would include:

- where the member is an employee who was hired on the basis that the employment would end on expiry of a definite term or contract or on the completion of a specific task
- where the member is a construction employee, as defined in Reg. 285/01 of the *Employment Standards Act, 2000*

Note: Reg. 285/01 defines “construction employee” as:

(a) an employee employed at the site in any of the activities described in the definition of “construction industry”, or

(b) an employee who is engaged in off-site work, in whole or in part, but is commonly associated in work or collective bargaining with an employee described in clause (a);

“construction industry” is defined as:

the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site;

- where the member is an employee who is on a temporary lay-off, as defined in subsection 56 (2) of the *Employment Standards Act, 2000*

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm#BK95

Proposed regulations – Election to opt out (JSPPs, MEPPs)

In order to implement s. 74.1, amendments to Regulation 909 are needed to establish how and when JSPPs and MEPPs can make these elections .

Existing JSPPs and MEPPs would be able to file an election to opt out of providing grow-in benefits within one calendar year of section 74.1 coming into force. Newly established MEPPs and JSPPs would be able to file an election within one calendar year of the date of registration or certification, respectively. The Act specifies that only one election may be made in respect of a pension plan.

The election would contain:

- the effective date of the election;
- the name and provincial registration number of the plan; and

- the name and contact information for the plan administrator.

The effective date could be no earlier than the date on which the election is filed.

Plan administrators would be required to give notice of the election to members accruing benefits in Ontario in the first annual statement issued after the effective date of the election. Notice of the election would also be included in the information given to new members accruing benefits in Ontario (see section 25 of the Act).

Plan administrators would also be required to give notice of the election to each trade union or Pension Advisory Committee representing members of the plan who are accruing benefits in Ontario. This notice would be given within 30 days of filing the election and would include its effective date.

Plan administrators would also be required to certify to the Superintendent that the notice had been given, within 60 days after it is given to the members, trade unions and any Pension Advisory Committees.

Rescinding an Election

The election to opt out of providing grow-in benefits may be rescinded at any time after the original election has been filed by giving notice to the Superintendent.

The notice would contain:

- the date of the original election to opt-out;
- the effective date of the rescission;
- the name and provincial registration number of the plan; and
- the name and contact information for the plan administrator.

The effective date could be no earlier than the date on which the rescission is filed.

Plan administrators would be required to give notice of the rescission and its effective date to all members of the plan in the first annual statement issued after the effective date of the rescission.

Plan administrators would also be required to give notice of the rescission to each trade union or Pension Advisory Committee representing members of the plan. This notice would be given within 30 days of filing the rescission and would include its effective date.

Plan administrators would also be required to certify to the Superintendent that notice has been given, as required, within 60 days after it is given to the members, trade unions and any Pension Advisory Committees.

Proposed clarification - Superintendent power to order a wind up

The Act currently allows the Superintendent to order a wind up of a plan under certain circumstances, for example, if all or substantially all of the members cease to be employed by the employer. For greater clarity, it is proposed that the Superintendent be

allowed to order the wind up of a plan if:

- the plan has no members (i.e., it has only former members, retired members and beneficiaries who are not members); or
- members of the pension plan no longer accrue pension benefits or ancillary benefits under the plan and employees are no longer allowed to become members of the plan under section 31 of the Act.

In these circumstances, the benefits of the plan beneficiaries may be more secure if the plan were wound up.