Pension Alert – ORPP Update: Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016

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On April 14, 2016, the Ontario Government introduced Bill 186, the *Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016* (the "Bill") with its first reading.

The Bill provides the statutory scheme for the Ontario Retirement Pension Plan ("ORPP") and replaces the 2015 ORPP legislation. The Bill sets out plan design features which are expected of a pension plan text and includes provisions which are similar to those contained in pension standards legislation.

Participation in the ORPP is mandatory for an employer which does not have a "comparable workplace pension plan" and its Ontario employees. If an employer did not offer a registered workplace pension plan as of August 11, 2015, the employer and its Ontario employees will be required to start contributing to the ORPP in waves depending on the size of the employer. If an employer offered a registered workplace pension plan as of August 11, 2015, the employer would have until 2020 to decide what to do with respect to its workplace pension plan if it does not meet the "comparable" threshold.

Highlights of the Bill

The Bill has no "big surprises". It provides more information and details of the ORPP which answer some of an employer's questions. Here are some highlights:

- "Employer" is given an extended meaning. The definition does not only cover a person who pays remuneration to an employee but also an employer of the "holder of an office" who pays a stipend or remuneration to such holder of office and an employer prescribed by the regulations. Since the regulations are not yet available, the scope of the definition remains to be seen. The regulations will also deal with situations where an employee's remuneration is paid by more than one person.
- As previously announced by the Ontario Government, employers which did not offer a registered workplace pension plan as of August 11, 2015 will be required

to start contributing to the ORPP in different waves, depending on the size of the employer:
    - An employer with 50 or more employees is required to start its contributions on January 1, 2018.
    - An employer with less than 50 employees is required to start its contributions on January 1, 2019.

This timeframe is not contained in the Bill and is expected to be contained in the regulations.

One of the key questions for an employer is how to determine the employer's size in deciding the applicable wave. This is not provided in the Bill but it is expected to be included in the regulations. The Ontario Government's News Release regarding the Bill provides some information: an employer's size would be based on the number of T4 slips that were issued to its Ontario employees in 2015.

- The Bill expressly excludes employees of the federal government from the ORPP and contemplates that there may be other employment exempted from the ORPP.
- The News Release indicated that employees of federally-regulated industries (e.g., banks) are not eligible to contribute to the ORPP and that there are ongoing discussions for their participation and the participation of the self-employed in the ORPP. But the Bill does not expressly preclude their participation.
- The Bill provides that an employer which offers a "comparable" workplace pension plan may opt-in. This means that if such employer opts in, all its Ontario employees are required to contribute to the ORPP.
- The Bill also provides for other design features of the ORPP previously announced by the Ontario Government including the "comparable" test, contribution rates, minimum and maximum earnings for determining contributions, benefit formula and pension commencement age. Please see our Pension Alerts (ORPP Update September 2015, ORPP Update October 2015 and ORPP Update February 2016) on previous announcements relating to the ORPP.

Apart from the ORPP design features, the Bill also includes provisions dealing with ORPP funding and administration and other matters.

- There are detailed provisions to deal with a funding shortfall and funding excess.
- There are detailed provisions regarding the collection, use and disclosure of personal information by the ORPP Administration Corporation.
- The ORPP Administration Corporation is given broad authority to impose penalties on any person for contravening the legislation.
- A statutory offence is created for an employer which fails to remit employer contributions, deduct or remit employee contributions or keep and retain prescribed records for the prescribed time period.
- A director of a corporation which is an employer can be held jointly and severally liable with the corporation for the corporation's failure to remit contributions in certain circumstances.
- The ORPP plan text will be registered under the *Income Tax Act* (Canada).

- The ORPP is subject to periodic reviews to ensure that it continues to meet its intended objectives. The first review will be performed 5 years after full implementation and subsequent reviews will be performed every 10 years.

What can be expected going forward?

- Regulations in support of the Bill will be introduced this summer to set out additional required details of the statutory scheme.
- Education will start this summer to ensure employers and employees have the information and time they need to prepare for the implementation.
- The process of verifying comparable workplace pension plans will start in the fall.
- The process of enrolment will start in early 2017.

If you have any questions or comments, please contact Sonia T. Mak, Partner and Leader of the Pension and Benefits Group of the Toronto office, or any member of our Pension and Benefits Group. Our Pension and Benefits Group will continue to monitor the development of the ORPP and issue ORPP Updates on new key developments.

By

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