Ontario Changes Definition of "Spouse" in Pension Benefits Act

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As part of changes arising from the *Ontario All Families Are Equal Act*, *2016*, the Ontario government changed the definition of "spouse" in the OPBA.

Pension plan sponsors and administrators need to change plan administration and update plan texts and other plan documents due to this legislative change.

As part of changes arising from the *Ontario All Families Are Equal Act*, *2016* ("AFAEA"), the Ontario government changed the definition of "spouse" in the Ontario *Pension Benefits Act* ("OPBA"). This change became effective on January 1, 2017. The AFAEA was passed with the publicized goal of ensuring equal treatment for all parents and children in the province.

Prior to the change, a "spouse" was defined in the OPBA to include either of two persons who are living together in a conjugal relationship in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the Ontario *Family Law Act*. The change replaces the reference to "natural or adoptive parents of a child, both as defined in the *Family Law Act"* with "parents of a child as set out in section 4 of the (Ontario) *Children's Law Reform Act*". This means that the test for determining who is a parent of a child (and in effect, who could qualify as a "spouse") has changed.

The *Children's Law Reform Act* contains updated rules on parentage, which now includes the concepts of children conceived with assisted reproduction methods and surrogacy. In effect, there are now more detailed provisions of who qualifies as a "parent of a child", which will have to be considered by plan sponsors and administrators. For example, spousal entitlements under the OPBA, such as post-retirement death benefits and spousal waivers, may be affected depending on the spousal relationships in a particular circumstance.

Plan administrators must administer their pension plans in a manner consistent with this new definition of spouse. To that end, plan administrators should have a robust understanding of how plan administration must change. Pension plan texts and other plan documents will also need to be reviewed and updated to reflect this change.

If you have any questions about this legislative change or have any other pension and benefits questions, please contact any member of our Pension and Benefits Group.

By

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