Hicks Morley
HUMAN RESOURCES LAW AND ADVOCACY

FTR NOW

AUGUST 11, 2015

ORPP: ONTARIO GOVERNMENT ANNOUNCES IMPLEMENTATION DETAILS

BY: STEPHANIE J. KALINOWSKI AND NATASHA D. MONKMAN

Today, the Ontario government released new details about the Ontario Retirement Pension Plan (“ORPP”) and how it will be implemented.

The ORPP was announced in the 2014 Ontario Budget as a major initiative to help address the government's concerns around retirement income adequacy for middle income earners. On December 17, 2014, the government released a consultation paper entitled "Ontario Retirement Pension Plan: Key Design Questions" ("ORPP Design Consultation Paper"), and solicited feedback on some of the outstanding design questions related to the implementation of the ORPP. In particular, the ORPP Design Consultation Paper discussed the types of arrangements that might qualify as “comparable workplace pension plans” and exempt the employers who sponsor them (and their employees) from mandatory participation in the ORPP.

In the 2015 Ontario Budget, the government indicated that it had received thousands of submissions responding to the ORPP Design Consultation Paper, and committed to consider the feedback it had received and to announce its conclusions on these design issues. Today's announcement outlined several important details employers in Ontario have been waiting for, including the proposed timelines for rolling out the ORPP and the definition of what is a comparable workplace pension plan, which we discuss in this *FTR Now.*

ORPP – AN OVERVIEW

The *Ontario Retirement Pension Plan Act, 2015* (the "*ORPP Act*"), which received Royal Assent on May 5, 2015, sets out certain "basic requirements" of the ORPP. Under the *ORPP Act*, the ORPP must:

- be mandatory for eligible employees and eligible employers in Ontario;
- have a maximum combined contribution rate of 3.8%, shared equally by employers and employees;
- apply to those employees who work in eligible employment in Ontario between 18 and 70 years of age who do not participate in a "comparable workplace pension plan" and whose annual salary and wages are above a yet-to-be-determined earnings threshold;
- have a maximum earnings threshold for 2017 of $90,000, as adjusted to reflect increases in the Year's Maximum Pensionable Earnings under the federal Canada Pension Plan ("CPP") between 2014 and 2017;
- pay indexed benefits, including survivor benefits, commencing at age 65, subject to the ability to elect to start benefits as early as age 60 and as late as age 70; and
- provide for transition rules concerning the phasing in of contribution rates.

Today's announcement provided new details on some, but not all, of the above features.

THE COMPARABLE PLAN EXEMPTION

Of most interest to many employers will be the definition of a "comparable workplace pension plan" which will determine which employees do and don't participate in the ORPP. Employees who participate in a comparable plan and their employers will not be required to contribute to the ORPP. Employees who do not participate in a comparable workplace plan, including employees serving a waiting period, employees who have chosen not to enroll in a voluntary pension plan, and employees who are not covered by a comparable plan, must be enrolled in the ORPP.

In the ORPP Design Consultation Paper, the government indicated its preference was to exempt only those employers who provided defined benefit ("DB") or multi-employer target benefit plans. The government has changed this position and announced today that some defined contribution ("DC") plans will qualify as comparable. The government also released other details about the conditions an employer's plan must meet in order to fall within the exemption.

Only registered pension plans ("RPPs") will be considered comparable, and only if they meet certain minimum thresholds. Group RRSPs and other types of savings plans, like Deferred Profit Sharing Plans and Tax-Free Savings Arrangements, will not be considered comparable and employees participating only in those plans will not be exempt from participating in the ORPP.

The minimum thresholds an employer's RPP must meet in order to qualify as a comparable workplace pension plan vary based on the type of plan. The thresholds are:

<u>DB Plans</u>

- For earnings-based DB plans, an annual benefit accrual rate of at least 0.5%.
- For flat-rate DB plans, an accrual rate equivalent to the 0.5% accrual rate set for earnings-based DB plans, which will be determined by the formula:

$$\frac{\textit{Monthly Dollar Benefit Accrual x 12}}{\textit{Maximum Hourly Wage Rate x 2080 hours/year}} \geq \textit{0.5\% accrual rate}$$

<u>DC Plans</u>

- A total combined employee-employer contribution rate of at least 8% of base earnings per member. The employer's contribution must be at least 50% of the minimum 8% contribution (i.e. 4%). It is not necessary for the employer to contribute 50% of contributions made above the minimum 8% contribution rate.
- For flat-dollar DC plans (i.e. contributions earned on an hourly basis), a contribution rate that is equivalent to the minimum 8% contribution rate set for earnings-based DC plans. 50% of the minimum comparable contribution must be made by the employer. The equivalent contribution rate will be determined by the formula:

$$\frac{\textit{Monthly Dollar Contributions x 12}}{\textit{Maximum Hourly Wage Rate x 2080 hours/year}} \geq \textit{8\% accrual rate}$$

Hybrid Plans

- For DB/DC combination plans, the threshold will be determined as:

$$\frac{\textit{Annual DB Accrual Rate}}{0.5\%} + \frac{\textit{Annual DC Contribution Rate}}{8\%} \geq 1$$

- For hybrid plans that use a “greater of” the DB or DC benefit, either the minimum threshold for the DB formula or the minimum threshold for the DC formula must be met.

Pooled Registered Pension Plans (“PRPPs”)

- The government continues to work on developing a comparability threshold for PRPPs.

Multi-Employer Pension Plans (“MEPPs”)

- The government is continuing to work on developing an exemption threshold for MEPPs, which may be DB, DC, or hybrid plans. It did not release any details about exemptions for target benefit plans (“TBPs”), which may or may not also be MEPPs.

For employers who currently sponsor a RPP, a verification process will start in 2016. This process is expected to involve some form of employer confirmation of the terms of its RPP and an evaluation of its coverage. Details about how this verification process will be administered were not given.

It remains to be determined whether an employer who sponsors a comparable plan and is otherwise exempt from ORPP participation would be able to opt-in to the ORPP.

THE BASIC EARNINGS EXEMPTION

While the maximum ORPP earnings is set by legislation ($90,000), the basic earnings exemption is not specified. In the ORPP Design Consultation Paper, the government discussed multiple approaches to setting a basic earnings exemption. For example, the government considered whether the basic earnings exemption should mirror the annual exemption applicable to the CPP ($3,500). The government did not release further details today but it is expected that more information about the basic earnings exemption will be announced in the near future.

IMPLEMENTATION TIMELINES

The government advised today that the ORPP will be rolled out in four separate waves starting on January 1, 2017, with employers grouped into one of these waves based on whether or not they have a workplace RPP as of August 11, 2015. Employers who do not currently offer a RPP will fall into the first three (earlier) implementation waves. Contributions will be phased-in based on which wave an employer falls into, as outlined below:

- The first wave will be comprised of large employers with 500 or more employees who do not, as of August 11, 2015, have a workplace RPP (whether it qualifies as a comparable plan or not). Partial contributions start January 1, 2017 and reach the full combined 3.8% contribution rate by 2019.
- The second wave is for medium employers of 50 to 499 employees who do not, as of August 11, 2015, have a workplace RPP. Partial contributions start January 1, 2018 and reach the full combined 3.8% contribution rate by 2020.
- The third wave is for small employers with 50 or fewer employees who do not, as of August 11, 2015, have a workplace RPP. Partial contributions start January 1, 2019 and reach the full combined 3.8% contribution rate by 2021.
- The fourth and final wave is for employers who, on August 11, 2015, offer a RPP, whether or not it is comparable at that time and whether or not it covers all employees. The full 3.8% combined employer-employee contribution rate will begin January 1, 2020 if the employer's RPP does not by then meet the conditions to qualify as a comparable plan, or for any employees that are not covered by the employer's comparable plan.

The fourth wave gives employers who now sponsor a RPP time to modify it so that it meets the conditions for a comparable plan by 2020, if that employer wishes to do so. Employers who do not have a RPP on August 11, 2015 but who set up a comparable plan before their entrance wave will be exempted from the ORPP with respect to those employees participating in the comparable plan.

This schedule was designed so that by 2020, every employee in Ontario will be either participating in the ORPP or participating in a comparable workplace pension plan.

THE SELF-EMPLOYED

Since it is anticipated that the ORPP will be a RPP, it will need to comply with the federal *Income Tax Act* (“*ITA*”) registration rules for RPPs. Currently, self-employed individuals cannot participate in RPPs under the *ITA*. The Ontario government has asked the federal government to amend the *ITA* to allow self-employed individuals to participate in the ORPP, and is continuing to explore options to allow self-employed individuals to participate in the ORPP.

OTHER CONDITIONS FOR EMPLOYEE PARTICIPATION

As has been indicated previously, federally regulated employees working in Ontario will not be captured by the ORPP.

For employees who are not federally regulated, there may be situations where an employee is captured by the ORPP even if for other purposes, such as tax withholdings or pension regulation, they might be considered to be “employed” in a different province. Details like this will need to be clarified as the design of the ORPP develops.

THE NATURE OF ORPP BENEFITS

The government stated that benefits will start to be paid to ORPP members in 2022, and offered additional details about the level of benefit an employee participating in the ORPP could receive. For example, an employee with an annual salary of $45,000 who contributes at a rate of $2.16 per day for 40 years could receive an annual benefit of $6,410 per year. An employee with an annual salary of $90,000 who contributes $4.50 per day could receive an annual benefit of $12,815 per year. ORPP benefits will be inflation-protected. The level of benefits and inflation protection will, however, be linked to the sustainability of the ORPP.

If, as is currently expected, the ORPP is a RPP, participation in the ORPP would generate a Pension Adjustment that affects an employee’s RRSP contribution room, and employee contributions would be tax-deductible up to the *ITA* limits.

The government indicated that it is examining how to make the ORPP portable for employees who have multiple employers over their careers, and is “committed” to developing a buy-back mechanism that would allow employees to purchase ORPP service credits for periods during which they were unable to contribute to the ORPP.

ORPP ADMINISTRATION

The ORPP will be administered by an arm's length entity, the Ontario Retirement Pension Plan Administration Corporation ("ORPP AC"). The province is establishing a Nominating Council to provide advice and recommendations to the government on the appointment of the initial Board of Directors for the ORPP AC.

FOR MORE INFORMATION

We will continue to monitor the progress of the ORPP initiative in Ontario and provide you with timely updates as they are available. If you have any questions about the impact of the ORPP in your workplace and on your existing retirement plans, please contact Stephanie Kalinowski at 416.864.7263, Natasha Monkman at 416.864.7302 or any member of Hicks Morley's Pension, Benefits and Executive Compensation Team.
