FTR Now

CPP Amendments – New Requirements for Employer-Paid Disability Benefits

Date: December 28, 2011

On December 15, 2011, Bill C-13, *Keeping Canada's Economy and Jobs Growing Act* received Royal Assent. Bill C-13 is omnibus legislation designed to implement a number of measures proposed in the federal government's 2011 Budget. This *FTR Now* discusses one aspect of Bill C-13 that amends the *Canada Pension Plan* (CPP) and creates new requirements for employer-paid disability benefits.

Significantly, for employers that provide disability benefits to their employees through self-funded or administrative services only (ASO) arrangements, Bill C-13 amends the CPP to require that employers deduct CPP contributions from such benefits. This change is deemed to come into effect retroactively on January 1, 2006, and provides for a legislative override of the 2010 decision of the Federal Court of Appeal in *Toronto Transit Commission v. Minister of National Revenue*.

As discussed in our FTR Now of February 11, 2010, the TTC case concerned an appeal of the assessment of the Minister of National Revenue. Under that assessment, and consistent with the Canada Revenue Agency's policy, CPP contributions were required to be paid on the monthly ASO long term disability payments to two Toronto Transit Commission employees. The TTC challenged the assessment. Ultimately, the Federal Court of Appeal reversed the assessment and concluded that CPP contributions were not required in respect of disability payments made from the TTC's ASO plan. In coming to this conclusion, the Federal Court of Appeal distinguished the relevant provisions in the CPP from comparable provisions in the *Employment Insurance Act* which have been interpreted to subject ASO disability payments to employment insurance premiums. The Federal Court of Appeal decision was not appealed. Instead, the federal government chose to enact legislation to ensure that CPP contributions and EI premiums are both payable on ASO disability payments.

As a result of the changes to the CPP made by Bill C-13, deduction and remittance of both employee and employer CPP contributions on disability payments made under self-funded or ASO arrangements is required. Employers should check with their payroll providers or, as applicable, their ASO providers to ensure that CPP deductions are made in accordance with these new requirements.

If you have questions about the changes to the CPP, please contact any member of our Pension and Benefits Group.

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