FTR Now

Ontario Budget 2015

Date: April 28, 2015

On April 23, 2015, the Ontario Minister of Finance tabled the 2015 provincial Budget, "Building Ontario Up" ("Budget"), and Bill 91, *Building Ontario Up Act (Budget Measures), 2015* ("Bill 91"), omnibus legislation designed to implement some of the proposals contained in the Budget.

In this *FTR Now*, we highlight some of the key proposals that are of particular interest to employers, human resources professionals and pension plan administrators. These include:

- the Ontario Retirement Pension Plan ("ORPP");
- ongoing pension reform;
- measures promoting the sustainability and affordability of Ontario's public sector pension plans;
- proposed amendments to the *Public Sector Labour Relations Transition Act, 1997*;
- changes to the Ontario Drug Benefit Program;
- regulation of the financial advice sector; and
- affirmation of key government commitments, including with respect to public sector cost control, and the prevention of workplace sexual harassment and violence.

The following is a more detailed summary of these key Budget announcements, followed by a brief description of some additional initiatives of interest to employers.

ORPP

The Budget and Bill 91 provide further information concerning the ORPP, including confirmation of the planned January 1, 2017 implementation date, updates on recent public consultations on key design elements, and next steps.

The ORPP was first announced in the 2014 Budget as an initiative to help address the government's concerns around retirement income adequacy for middle income earners – the demographic that the government considers most at risk for retirement under-saving.

Also known as the *Ontario Retirement Pension Plan Act, 2015*, Bill 56 was introduced to the Ontario legislature on December 8, 2014. As detailed in a previous *FTR Now*, Bill 56 will establish the operational framework and timing for implementation of the ORPP, including certain basic design requirements.

The introduction of Bill 56 was followed by a consultation paper entitled "Ontario Retirement Pension Plan: Key Design Questions" ("ORPP Design Consultation Paper") on December 17, 2014. The ORPP Design Consultation Paper solicited public comments and feedback on:

- the types of arrangements that might qualify as comparable workplace pension plans, and which might therefore enable employers to obtain exemptions from mandatory participation in the ORPP;
- the minimum earnings threshold, below which workers would be exempt from making contributions to the ORPP; and
- options for assisting the self-employed save for retirement.

Bill 56 passed Second Reading and was referred to the Standing Committee on Social Policy, which amended the Bill to require that the Minister of Finance prepare a cost-benefit analysis of the proposed ORPP, and to formally table the report in the Legislative Assembly before December 31, 2015. Bill 56 was debated at Third Reading on April 27, 2015.

The Budget signals that the government intends to undertake further analysis and dialogue respecting two issues in relation to which divergent views were expressed during the ORPP consultation process. Specifically:

- the proposed exemption for comparable workplace pension plans, and how best to meet the government's objective of strengthening the retirement income foundation for Ontarians through the ORPP; and
- the minimum earnings threshold, and the need to achieve balance between ensuring that all workers have adequate retirement income security and ensuring that long-term low-income workers are not adversely affected by saving more for retirement.

The government has committed to consider feedback from consultations and to announce its conclusions on these design issues shortly. Of key interest to many employers will be the government's decision respecting the exemption for comparable workplace pension plans, particularly given competing views that have been expressed. These views include doing away with the exemption altogether so as to expand ORPP coverage and simplify administration. Another view is that the comparable workplace pension plan exemption should be expanded to include defined contribution ("DC") pension (and possibly other capital accumulation) plans, recognizing that these forms of employer-sponsored retirement plans are quite common, and that employers should be treated fairly and not incur competitive disadvantage on the basis of the form of retirement plan that is provided to employees.

Further, the Budget indicates that the government will continue to explore collaboration with the federal government with a view to enabling the participation of the self-employed in the ORPP.

Finally, the Budget and Bill 91 provide that the ORPP is to be governed and administered by an arm's-length entity, called the Ontario Retirement Pension Plan Administration Corporation.

The January 1, 2017 implementation date for the ORPP is looming closer, and there are still important design elements to be determined. The Budget indicates that these details will be announced in the near future, but in the meantime employers should consider the potential workplace implications of the ORPP, including the likelihood of additional payroll costs. In anticipation of potential ORPP related costs, employers that are engaging in collective bargaining over this period might wish to explore opportunities to negotiate contingent reductions to future wages or other prospective elements of compensation (e.g., health and welfare benefits and/or retirement benefit accruals or contributions), as an offset.

ONGOING PENSION REFORM

The Budget contains details regarding a number of anticipated pension reforms, most of which had been previously announced by the Ontario government.

TARGET BENEFIT PLANS

Target benefit plans provide a targeted retirement income that is funded by fixed contributions. If a target benefit plan is underfunded, accrued benefits may be reduced to address the funding shortfall. Although many multi-employer pension plans ("MEPPs") have characteristics of a target benefit plan, the regulation of these MEPPs under the *Pension Benefits Act* ("PBA") is a patchwork of measures. The Budget announced that the government will release a consultation paper on a comprehensive regulatory framework for target benefit MEPPs. Once a regulatory framework has been implemented for target benefit MEPPs, the time-limited solvency funding relief for specified Ontario MEPPs will sunset. Feedback from the target benefit MEPP consultation process will inform the subsequent development of a framework for target benefit single-employer pension plans ("SEPPs").

CONTRIBUTION HOLIDAYS AND BENEFIT IMPROVEMENTS

The Budget highlights proposed amendments to the PBA regulations that, if adopted, will strengthen funding requirements where a pension plan is amended to improve benefits, and regulate the taking of "contribution holidays".

The Ontario government originally announced these measures in a News Release and Technical Backgrounder on August 24, 2010. The *Securing Pension Benefits Now and for the Future Act, 2010*, which was passed in December 2010, contained the legislative provisions required to introduce these measures. However, the measures have not been proclaimed into force pending issuance of the necessary supporting regulations. Coincident with the Budget's release, the government released draft supporting regulations consistent with its original August 24, 2010 announcement.

If the draft regulations are passed in their current form, contribution holidays will be permitted only if the plan's transfer ratio will not be reduced below 105% (assuming that contribution holidays are permitted in the first instance by the documents that create and support the plan). The administrator will be required to file an annual statement confirming the plan's eligibility to continue a contribution holiday, and disclose information about the contribution holiday to members, retirees and other plan beneficiaries.

Under the draft regulations, benefit improvements must be funded based on the pension plan's funded status. If a plan has a transfer ratio and/or a going concern funded ratio of at least 85% after benefits are improved, the improvements must be funded over no more than eight years on a going concern basis. However, if a plan has a transfer ratio and/or a going concern funded ratio of less than 85% after benefits are improved, a lump sum payment must be made in order to bring the transfer ratio and/or the going concern funded ratio up to 85%. Any remaining cost of the benefit improvement must be amortized over no more than five years on both a going concern and solvency basis. The draft regulations are available on the government's Regulatory Registry. The government is seeking feedback with respect to the draft regulations by June 12, 2015.

VARIABLE DC BENEFITS

The Ontario government's August 24, 2010 News Release also announced the government's intention to amend the PBA to permit the payment of "variable benefits" directly from DC pension plans. Bill 91 contains amendments to the PBA that make DC variable benefits possible, as well as provisions ensuring that owners of DC variable benefit accounts have certain portability rights.

UPDATING REGULATORY REPORTING STANDARDS

In the summer of 2014, the government sought feedback to proposed PBA regulations that would update reporting requirements to reflect changes to professional accounting standards. The Budget sets out further potential changes to plan administrators' reporting obligations, including:

- Raising the asset threshold at which a pension fund's financial statements must be audited (from $3 million to $10 million), and identifying an alternative to the requirement to file audited pension fund financial statements;
- Requiring DC plans to file an Investment Information Summary (Form 8); and
- Easing the requirement for detailed information about individual investments exceeding 1% of the market value of the pension fund.

PENSION PLAN INVESTMENTS IN ONTARIO INFRASTRUCTURE

The Budget indicates that the government will enact a limited exemption to the federal pension investment rule that prohibits pension plans from owning securities of a corporation to which are attached more than 30% of the votes that may be cast to elect the corporation's directors. The proposed exemption would facilitate investments by Ontario-registered pension plans in Ontario infrastructure. A draft regulation will be published for comment in the coming months.

PENSION ADVISORY COMMITTEES

A pension advisory committee ("PAC") is a committee of member representatives, the purposes of which are to monitor a plan's administration, to make recommendations to the plan administrator and to increase members' understanding of their plan.

The *Pension Benefits Amendment Act, 2009* ("Bill 236") amended the PBA provisions relating to PACs. The changes, which are described more fully in a previous *FTR Now*, have not yet been proclaimed into force pending the issuance of supporting regulations. The new PBA rules regarding PACs will make it easier for members to establish PACs, including by allowing a trade union to consent to the establishment of a PAC on behalf of active members it represents. Under the new provisions, a PAC's costs will be payable out of the pension fund, subject to prescribed restrictions. The Budget signals that regulations supporting the new rules regarding PACs are forthcoming in 2015.

REVIEW OF FINANCIAL SERVICES REGULATOR'S POWERS

The government will review the mandate of the Financial Services Commission of Ontario, which regulates private workplace pension plans in Ontario, as well as the insurance sector, credit unions, loan and trust companies and certain other financial services entities.

SUSTAINABILITY AND AFFORDABILITY OF ONTARIO'S PUBLIC SECTOR PENSION PLANS

SOLVENCY FUNDING EXEMPTIONS FOR JOINTLY SPONSORED PENSION PLANS

The Budget reiterates the government's efforts to enhance the sustainability and affordability of Ontario public sector and broader public sector pension plans.

In 2014, the government passed amendments to the PBA to introduce a framework under which a public sector SEPP can convert into a jointly sponsored pension plan ("JSPP"). Unlike SEPPs, JSPPs are funded by both the employer(s) and members. Although accrued benefits cannot be reduced under a JSPP, member and employer contribution increases and future benefit reductions can be used to control the funding costs of the plan. In exchange for the added exposure to funding risk, members of a JSPP have joint responsibility for the design and administration of the plan.

Further to a consultation paper released in February 2015, the Budget indicates that draft regulations supporting the transformation of public sector SEPPs into JSPPs will be published for public comment later this year.

One of the factors that may lead stakeholders to seek to convert a public sector SEPP into a JSPP is whether the resulting JSPP will be exempt from the requirement to fund the plan on a solvency basis. Nearly all existing Ontario JSPPs were granted such an exemption effective August 2010. On April 15, 2015, the government released proposed criteria which, if adopted, will govern the assessment of future applications for JSPP solvency funding exemptions. The proposed criteria focus on the number of participating employers, the JSPP's asset base, and the strength of the governance practices in place. The government is seeking comments on the proposed criteria by June 1, 2015.

POOLING OF PUBLIC SECTOR PENSION PLAN ASSETS

In a October 2012 report titled "Facilitating Pooled Asset Management for Ontario's Public Sector Institutions" (the "Morneau Report"), the Pension Investment Advisor to the government recommended that a new pooled asset management entity be created for the Ontario public sector.

Following on the Morneau Report and a subsequent working group, the government has introduced the *Investment*

Management Corporation of Ontario Act, 2015 (the “IMCO Act”), which is Schedule 19 to Bill 91. The IMCO Act will govern the establishment of the Investment Management Corporation of Ontario (“IMCO”), the objectives of which will be to provide investment management and investment advisory services to its “member” entities. The IMCO Act does not list IMCO’s initial members. Rather, the Act indicates that members may include: Crown agencies, boards, authorities and corporations; universities; municipalities and other prescribed bodies. Members will be required to enter into a service agreement with IMCO. The government has not provided a timeframe for commencement of IMCO’s operations.

TIMEFRAME EXTENDED FOR PUBLIC SECTOR SPLIT PENSION ASSET TRANSFERS

Section 80.1 of the PBA provides a time-limited window for certain public sector pension plans to implement asset transfers consolidating the benefits of members previously affected by past government divestments. These asset transfers are available to eligible members who request that their benefits be consolidated under their successor employer’s plan.

The window during which such asset transfers may be made is set to expire on July 1, 2016. However, Bill 91 proposes to amend the PBA to extend the deadline to July 1, 2017. For more information regarding Section 80.1 transfers, including the eligible plans, see our *FTR Now*, Pension Asset Transfers Made Easier.

CHANGES TO THE ONTARIO DRUG BENEFIT PROGRAM

The Ontario Drug Benefit Program (“ODB Program”) covers most of the cost of certain prescription drugs, nutrition products and diabetic testing agents for eligible Ontario-resident seniors age 65 and over. The Budget hints at changes to the ODB Program to enhance its efficiency and sustainability, including unspecified changes to coverage and adjustments to some dispensing payments. Since most private extended health benefits plans only reimburse expenses not covered under government plans such as the ODB Program, the proposed changes could shift costs to employer-sponsored prescription drug plans.

REGULATION OF THE FINANCIAL ADVICE SECTOR

The Budget reiterates the government’s intention to appoint an expert committee to consider tailored regulation of financial advisors, including financial planners. The deliberations of the expert committee may be of interest to employers who provide access to financial advisors through a workplace capital accumulation plan insofar as it may be necessary or desirable to ensure that such advisors meet any enhanced requirements that flow from the committee’s recommendations. On April 27, 2015 the government appointed four members to the independent expert committee. The expert committee will report to the Minister of Finance by early 2016.

OTHER MEASURES

The Budget contains a variety of initiatives of interest to employers, including:

- A $200 million funding increase for the Jobs and Prosperity Fund, which is intended to provide strategic incentives to secure investment in Ontario through the provision of grants to businesses.
- Affirmation of the government’s commitment to ensuring a robust apprenticeship system, in part through additional funding.
- An additional $250 million investment in the Ontario Youth Strategy over two years for programming focused in part on skills development and labour market connections, including target groups (e.g., at-risk youth, Aboriginal youth, newcomers and youths with disabilities).
- In accordance with the government’s commitment to controlling current and future costs in the public service and broader public sector, the Budget contains no additional funding for wage increases. Rather, the Budget states, “Any modest wage increases must be offset by other measures to create a net zero agreement, and all public-sector partners must continue to work together to control current and future compensation costs.”

- Proposed amendments to the *Public Sector Labour Relations Transition Act, 1997* ("PSLRTA") that would introduce a new minimum threshold necessary to trigger a vote under the PSLRTA. Bill 91 does not contain proposed amendments to the PSLRTA and accordingly, the intended scope of this initiative remains unclear.
- Reforms to the existing postsecondary education system funding model, beginning with the university sector. The government has announced its intention to formally engage the sector to develop a new model that will focus on improving alignment between public funding and outcomes.
- A renewed commitment to provide across-the-board wage increases for Personal Support Workers ("PSWs") in the publicly funded home and community care sector, with a specific commitment to raise their base wage to at least $16.50 per hour by April 1, 2016.
- Affirmation of commitments outlined in the government's Action Plan to Stop Sexual Violence and Harassment, including legislative reforms to workplace health and safety laws, among other measures.

CONCLUSION

We will continue to monitor these Budget initiatives and keep you informed of program details as they emerge and the introduction of implementation legislation.

Should you have any questions about the Budget and how it might impact your organization, please contact your regular Hicks Morley lawyer.