FTR Now

2015 Federal Election Update: ORPP or CPP – Which Will it be?

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Editor's Note: Following publication of this communication, the Ontario government announced that the first wave of ORPP implementation will be delayed by one year to January 1, 2018. Please be sure to read our FTR Now of February 17, 2016 *for updated information on this significant development, or contact your regular Hicks Morley lawyer for details.*

On October 19, 2015, Canada elected a majority Liberal federal government. The Liberal Party indicated during the election campaign that it would be prepared to consult with the provinces about expanding the Canada Pension Plan ("CPP"). While the Ontario government recently announced implementation details for the Ontario Retirement Pension Plan ("ORPP"), it has consistently stated that an expanded CPP would be its preferred method of addressing the retirement income gap for employees in this province. Given the election result, where does this leave the ORPP?

In this *FTR Now*, we explain why employers should continue to prepare for both the ORPP and an expanded CPP.

CPP EXPANSION TAKES TIME

CPP expansion is difficult to achieve. In order for the CPP to be amended, the following conditions must be satisfied:

- the federal government and 2/3 of included provinces must agree; and
- the included provinces in agreement must constitute 2/3 of the population.

This is no small feat. Even if the new federal government initiates consultations in late 2015 or early 2016, it is reasonable to expect that the consultation process could take years. Accordingly, there may not be agreement before the first wave of the ORPP is scheduled to take effect on January 1, 2017. The ORPP implementation details are outlined in our prior *FTR Now*, "ORPP: Ontario Government Announces Implementation Details."

ORPP LEGISLATIVE COMMITMENT

The Ontario government appears committed to implementing the ORPP, unless a framework for expanded CPP coverage has been developed and is legitimately viable. Following the election, Ontario Premier Wynne indicated that her government is optimistic that CPP enhancement is possible. However, in light of the provincial support required to achieve expansion, she also confirmed that Ontario will proceed with the ORPP for now. The Ontario government has emphasized that one of these options must come to fruition, and it is prepared to continue moving forward with the ORPP to reduce the retirement income gap for Ontario employees, rather than wait for the possibility of an expanded CPP to crystallize.

While the prior federal government refused to cooperate with Ontario on the implementation of the ORPP, the new government may be more accommodating and prepared to consider amendments to the *Income Tax Act* (Canada) and sharing of the existing CPP infrastructure, regardless of the status of CPP expansion. Such cooperation would further assist the Ontario government with the implementation of the ORPP.

TIME TO PREPARE

Given these developments, employers will likely want to continue preparing for ORPP implementation starting as early as January 1, 2017, depending on which wave they fall into. If employers wait until the ORPP is in effect, it may be more difficult

to make changes at that time. In our experience, as part of their preparations, employers are considering changes to existing retirement plans to reduce the impact of the new ORPP contributions, to reflect the integration of ORPP benefits into a plan's contribution or benefit formula, or to exempt themselves from the application of the ORPP. Employers need to be conscious of any notice requirements that may apply should they decide to proceed with changes to their existing retirement plans. Employers are also considering what impact higher payroll remittances might have on future wage increases. Employers with unionized workplaces need to be aware of their bargaining cycles and where they fall in relation to these coming changes and determine what, if anything, needs to be negotiated in anticipation of the roll-out of the ORPP or expanded CPP.

Our Pension, Benefits and Executive Compensation practice group continues to monitor developments relating to the ORPP and expanded CPP. If you have any questions, please contact Natasha D. Monkman at 416.864.7302 or any other member of our practice group.

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