FTR Now

Preparing the Municipal Sector for the Ontario Retirement Pension Plan

Date: February 9, 2016

The Ontario Retirement Pension Plan (“ORPP”) is coming and all municipal sector employers need to consider and prepare for the potential of ORPP participation and associated additional payroll costs commencing as early as January 1, 2017.

In this *FTR Now* we provide an overview of the ORPP and highlight key issues that you should be aware of, including:

- the application of the ORPP to municipal sector employers and employees, and potential costs and payroll implications;
- the ORPP implementation date that will apply to your organization;
- how participation in OMERS or other retirement arrangements may impact your ORPP obligations; and
- considerations and potential options your organization should be examining now.

ORPP COVERAGE AND CONTRIBUTION DETAILS

The ORPP was first 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. Since then, the Ontario government has been developing the legislative and regulatory framework to support the implementation of the ORPP beginning in January 2017. That development work is still ongoing as of the date of this *FTR Now*, but some of the known details concerning coverage and required contributions are as follows:

- the ORPP will be mandatory for Ontario employees between ages 18 and 70, whose annual earnings exceed $3,500, and who do not participate in a “comparable workplace pension plan”;
- there will be a target combined contribution rate of 3.8%, to be phased-in, which will be shared equally by employers and Ontario employees (i.e. the target employer contribution will be 1.9%); [1] and
- contributions will be required on earnings up to a maximum of $90,000 (adjusted to reflect increases in the Year’s Maximum Pensionable Earnings under the federal Canada Pension Plan (“CPP”) between 2014 and 2017).

For purposes of determining the scope of employee coverage, the Ontario government has indicated that the ORPP will apply to (i) employees who report to work at an employer's establishment in Ontario, and; (ii) employees who are not required to work at an employer's place of business but whose wages are paid from an Ontario-based employer (i.e. mobile employees and those who work from home). Also, since the Ontario government has stated that the ORPP is to provide coverage for all Ontario employees who do not participate in a comparable workplace pension plan, we expect that such coverage will be extended beyond full-time and part-time employees, and apply to temporary, casual and other categories of employment. We expect that this will be clarified over the coming months.

Employees who are not immediately enrolled in a comparable workplace pension plan but who will become eligible, subject to a waiting period and/or upon the employee's election, will nonetheless be required to participate in the ORPP during any period during which they are not participating in that comparable pension plan.

Finally, employers who do provide a comparable workplace pension plan and are therefore exempt from the ORPP in respect of participating employees will be permitted to opt-in to the ORPP. An opt-in, however, will apply for all employees and not just a specific group. In other words, if an employer elects to opt-in to the ORPP, then participation in (and full contributions to) the ORPP will be required even for employees participating in the comparable workplace pension plan. [2]

For additional information on these and other ORPP design details please see our *FTR Now* of January 28, 2016 and our *FTR Now* of August 11, 2015.

PHASED IMPLEMENTATION OF THE ORPP

Another significant feature of the ORPP is that implementation will be phased in over several years, commencing in 2017. Employers who provided a registered pension plan (or were in the course of registering a pension plan) as of August 11, 2015 will be the last to be enrolled, beginning in 2020. Other employers will be required to participate earlier, in one of three "Waves," as outlined below:

- Wave 1 – effective January 1, 2017, for employers with 500 or more employees;
- Wave 2 – effective January 1, 2018, for employers with 50 to 499 employees; and
- Wave 3 – effective January 1, 2019, for employers with 50 or fewer employees.

Contributions to the ORPP will be phased in over two to three years for Wave 1, Wave 2 and Wave 3, up to the target 3.8% combined employer-employee contribution rate beginning in January 2020.

ISSUES FOR MUNICIPAL SECTOR EMPLOYERS

As stated above, if an employer provides a comparable workplace pension plan then the employer will not be required to participate in the ORPP in respect of those employees who participate in that comparable plan.

For Ontario municipal sector employers, the opportunity to participate in a registered pension plan is subject to certain limitations prescribed by the *Ontario Municipal Employees' Retirement System Act, 2006* ("*OMERS Act, 2006*"). In general, these limitations provide that municipalities cannot contribute to any pension plan except for the Ontario Municipal Employees' Retirement System ("OMERS") and/or the CPP.

The vast majority of Ontario municipal sector employers do, in fact, participate in OMERS, although there are some that provide a group registered retirement savings plan or that do not provide any form of registered retirement plan. From amongst the permitted forms of retirement arrangements that may be provided by municipal sector employers who are governed by the*OMERS Act, 2006*, only OMERS satisfies the conditions for the ORPP's comparable workplace pension plan exemption. [3]

The Ontario government has previously indicated its intention to extend the ORPP to all Ontario employees who do not participate in a comparable workplace pension plan. To achieve this result, we anticipate that complimentary legislative amendments will be made to the *OMERS Act, 2006*, to permit participation in and contributions to the ORPP. Assuming that that this change is made,

- Ontario municipal sector employers who were participating in OMERS as of August 11, 2015 will be required to participate in the ORPP as early as January 1, 2020; and
- other Ontario municipal sector employers will, depending on employee population, fall into Wave 1, Wave 2 or Wave 3, and be required to participate in the ORPP as early as January 1, 2017, January 1, 2018 or January 1, 2019, respectively.

In other words, it is expected that all Ontario municipal sector employers will be required to participate in the ORPP by January 1, 2020, at least with respect to those employees who are not participating in OMERS. Also, this obligation to participate in the ORPP will extend to employees who are not yet eligible to participate in OMERS (i.e. because of service or earnings criteria), or who are eligible but have declined OMERS enrolment.

As indicated above, ORPP coverage will likely include temporary, casual and other categories of employment. However, it is anticipated that there will be further clarification on this issue of coverage, including whether, in the municipal sector for example, volunteer firefighters and council members are also potentially subject to the ORPP.

Finally, although participation in the ORPP will not be required for municipal sector employers in respect of employees who participate in OMERS, these employers are nonetheless permitted to opt-in. However, employers should be aware that an election to opt-in to the ORPP will very likely require that contributions be made both for the ORPP and OMERS, and increase overall payroll costs.

NEXT STEPS

It is anticipated that there will be additional legislation, regulations and related guidance respecting the ORPP over the coming months. In addition, the ORPP Administration Corporation (the corporation established to collect contributions and administer the ORPP) will be rolling out an assessment of Ontario employers to support the implementation of the ORPP and to identify the applicable Wave (i.e. date) for each employer's enrolment. Further details about this assessment process are expected to be announced in the coming weeks.

In the meantime, municipal sector employers should consider the following:

- Municipal sector employers participating in OMERS as of August 11, 2015 (for at least some employees), will have just under four years to budget for additional payroll costs respecting employees not in OMERS. These additional costs will come from a potential increase in optional participation in OMERS (for other than continuous full-time employees, following eligibility), or from required ORPP contributions (for those who are not eligible or who decline enrolment in OMERS). While municipal sector employers might consider expanding mandatory OMERS enrolment to all employees to access the comparable workplace pension plan exemption more broadly, the costs of this approach will likely be much greater.
- Municipal sector employers not participating in OMERS as of August 11, 2015 will be subject to ORPP participation on an earlier date (as early as January 1, 2017). These employers will want to consider current retirement and savings programs and whether to substitute or supplement these by enrolling in OMERS, or through participation in the ORPP.
- All municipal sector employers should consider the ORPP-related implications for any joint ventures and/or subsidiary companies and entities.
- To help mitigate against additional payroll costs, employers may wish to consider and plan for potential offsets (e.g. to compensation, benefits and/or other programs).
- In all cases, if considering any changes to help address ORPP-related costs, employers should account for relevant employment and labour relations issues (i.e. terms and conditions of employment, including collective bargaining agreements for unionized employees).

FOR MORE INFORMATION

Our Pension, Benefits and Executive Compensation practice group continues to monitor developments relating to the ORPP. If you have any questions, please contact Jordan N. Fremont at 416.864.7228, Natasha D. Monkman at 416-864-7302, or any member of our practice group. For additional insight into these matters and to discuss the implications for municipalities, please attend our conference call in conjunction with OMHRA on March 3, 2016. Please contact Mark H. Mason at 416.864.7280 or your regular Hicks Morley lawyer for more details.

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[1] In the event of ORPP funding shortfalls, the combined contribution rate could be increased by up to 0.2% (for a total combined rate of 4.0%).

[2]The government has not yet provided information with respect to how a buy-back of eligible service (i.e. relating to a waiting period or a period during which an employee was eligible to participate in a comparable pension plan but chose not to) is to be treated for purposes of the ORPP. Further details are expected regarding these and other technical issues.

[3]The comparable workplace pension plan exemption applies exclusively to registered pension plans, and only those that meet certain thresholds (i.e. an annual benefit accrual rate of at least 0.5% of base salary in the case of a defined benefit pension plan). OMERS is a registered pension plan and has an accrual rate that exceeds the stated threshold for a comparable workplace pension plan.
