FTR Quarterly

Preparing for the ORPP

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Editor's Note: Bill 186 passed Third Reading on June 2, 2016, as amended by the Standing Committee on Social Policy. Please read about the amendments in our blog post, ORPP Act Passes Third Reading as Amended by Committee*.*

The Ontario Retirement Pension Plan (ORPP) was first announced in the 2014 Ontario Budget as a major initiative to help address the Ontario government's concerns about retirement income adequacy, particularly for middle income earners. Since then, the Ontario government has made a series of announcements about the design and roll-out of the ORPP, culminating with the introduction of much anticipated new implementation legislation on April 14, 2016.

While there are plans for the federal and provincial governments to discuss in June the possibility of expanding the Canada Pension Plan (CPP), there is no guarantee that these discussions will result in an expansion of CPP, nor is there any indication of when an expansion would occur if there is agreement. However, the introduction of Bill 186, the *Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016* (*ORPP Act, 2016*), signals that the countdown has begun. With contributions to the ORPP set to begin as early as 2018, it is critical for employers to take steps now to understand how the ORPP is likely to affect them, and to start the process of planning for any changes that may be desired to obtain an exemption from the ORPP or to address the costs of participation.

ORPP Design

For employers, some key design features of the ORPP are as follows:

- **Mandatory Participation** – Participation in the ORPP is generally required for employees (including office holders) who report to work at an employer's establishment in Ontario, or who are not required to work at an employer's place of business but whose wages are paid from an Ontario-based employer. Largely consistent with prior announcements, the proposed *ORPP Act, 2016* would not extend participation in the ORPP to the self-employed or to federal government employees, and the legislation contemplates that future regulations could carve out other employee groups (i.e. other federally regulated employees).
- **Exemptions** – Mandatory ORPP participation will not apply to Ontario employees who participate in a "comparable workplace pension plan" (summarized below). To be clear, this exemption will not apply to a waiting period prior to enrolment in the comparable workplace pension plan. Also exempt are employees whose annual earnings are less than $3,500.
- **Required Contributions** – When fully implemented, employers and employees who participate in the ORPP will each be required to contribute 1.9% of pensionable earnings, for a combined maximum contribution rate of 3.8%. However, there is the potential for these contribution rates to be increased further if necessary to achieve funding sustainability.
- **Pensionable Earnings** – Contributions will be required on an ORPP member's annual earnings up to a maximum of $90,000 (subject to an inflationary adjustment).
- **Transition** – Employers will be required to enroll in the ORPP as early as 2017, with contributions for employees who are not exempt beginning in 2018, 2019 or 2020, depending on whether the employer sponsored a "comparable workplace pension plan" as of August 11, 2015, and how many employees it had.

A "comparable workplace pension plan" is a registered pension plan that meets certain benefit or contribution rate thresholds, as summarized below:

- **Defined Benefit (DB)** – Annual accrual rate of at least 0.5% of earnings.

- **Defined Contribution (DC)** – Annual contribution rate of at least 8%, with a minimum employer contribution rate of 4%.
- **Hybrid/Combination** – Benefits/contributions equivalent to a combination of the DB and DC thresholds.
- **Multi-Employer Pension Plan** – DB or DC threshold.

Comparability will be determined on the basis of employee subsets within a workplace pension plan, and it is therefore possible that a plan will qualify as comparable for certain employee subsets but not others.

Deferred profit sharing plans, registered retirement savings plans, tax-free savings accounts and other savings/retirement arrangements that are not registered pension plans will not qualify as a “comparable workplace pension plan.”

Next Steps for Employers

With the ORPP’s implementation date fast approaching, employers should be taking action now to identify whether they will be required to participate and, if so, when and for which employees.

To the extent that participation in the ORPP will be required, employers may wish to consider strategies to address the impact of the new ORPP costs. Strategies could include:

- **Exemption** from ORPP participation, for some or all Ontario employees – This will require that a comparable workplace pension plan be established, or that an existing registered pension plan be redesigned, to meet the comparable workplace pension plan threshold requirement.
- **Neutralizing** some or all of the cost of the ORPP, for some or all Ontario employees – This could involve changes to compensation, retirement plans or other employee benefits to keep total compensation and payroll costs at a similar level to what was in place before the ORPP came into effect.

However, before making changes to employee compensation packages, employers should consider the following issues:

- **Non-Union Employees** – The risk of potential constructive dismissal and/or breach of contract claims, and what strategies may be deployed to help address these risks.
- **Unionized Employees** – Whether collective bargaining agreements and/or negotiation obligations and practices present obstacles to making unilateral changes, potential strategies and the timeline for negotiation, and desired language for any agreement/settlement that might be sought.
- **Pension Legislation** – Compliance with notice and filing requirements applicable to registered pension plan amendments, including timelines that must be met to avoid having registered pension plan amendments rendered void.
- **Independent Contractors** – Potential new ORPP costs add to the risks of paying workers who may be improperly classified as independent contractors instead of as employees.
- **Multi-Jurisdictional Employers** – Whether changes to an existing retirement plan will be applied to all employees, the implications for plan administration and the impact on employees who transfer within the company to a job in another province.
- **Broader Human Resources Implications** – Whether the ORPP and/or potential changes to existing compensation packages may have implications for employee attraction and retention and employee mobility within and between organizations.

Should you have any questions regarding the ORPP or what mitigation strategies might be available to your organization, please contact your regular Hicks Morley lawyer.

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