

Human Resources Legislative Update

Ontario Publishes Description of Proposed Variable Benefits Regulations for DC Plans

Date: March 21, 2018

The Ontario government posted a description of proposed regulations on March 20, 2018 enabling it to implement the [variable benefit \(VB\) provisions applicable to defined contribution \(DC\) plans](#) under the Ontario *Pension Benefits Act* (PBA).

Background – DC Decumulation

Currently, Ontario members of DC plans who have terminated their employment with the plan sponsor and wish to start receiving retirement income must transfer their entire account balance to a Life Income Fund (LIF) or other permitted vehicle at a financial institution or to an insurance company to purchase an annuity.

In 2015, the PBA was amended by Bill 91 to provide an additional decumulation option for DC members by making it possible to make withdrawals directly from a DC pension plan account. The VB provisions in the PBA would permit, but not require, DC plans to be amended to offer LIF-like payments directly from a DC plan through the establishment of a VB account. This would allow former members who wish to start receiving retirement income to retain their account in their former employer's plan and potentially benefit from investment fees lower than those available to them upon transfer of their DC account balance to a personal retirement savings vehicle.

VB payments are not guaranteed like annuity payments but would be subject to a minimum annual withdrawal amount required by the *Income Tax Act* (Canada) and the maximum annual withdrawal amount set out in the PBA regulations applicable to LIFs.

Proposed Regulations

The proposed regulations provide additional details regarding the VB provisions of the PBA, including requirements related to the following:

- establishing a VB account when a member elects to receive a VB pension, including timelines, member communications, and member elections regarding the amount and frequency of payments;
- descriptions of the content to be included in the various statements provided to members and their spouses/beneficiaries (i.e. initial VB account statement, annual statement, statement on death, transfer statements);
- transferring amounts to and from VB accounts, including the requirement for spousal consent;
- providing annual statements (instead of biennial statements) to retired members within 60 days of a plan's year-end;
- death benefits, including establishing the order of entitlement to death benefits and the timelines for spousal/beneficiary directions; and
- statements with prescribed content upon a DC plan ceasing to provide VBs.

The provisions of the PBA are to be proclaimed into force should the proposed regulations be approved.

Regulations addressing family law issues related to the assets in VB accounts following the breakdown of a spousal relationship are to be released at a later date.

The Ontario government has not released any information regarding whether it intends to add "safe-harbour provisions" to the PBA to protect plan administrators from liability arising from retiree complaints about their investment options.

Comments regarding the proposed regulations to the PBA regarding VBs are due to the Ministry of Finance by May 4, 2018.