

Human Resources Legislative Update

Ontario Clarifies DB Funding Reforms under the *Pension Benefits Act*

Date: June 12, 2019

On May 21, 2019, the Ontario government filed [Regulation 105/19](#) amending Regulation 909 (General Regulation) under the *Pension Benefits Act* (PBA). The amendments mainly relate to clarifying elements of the defined benefit (DB) funding rules that took effect on May 1, 2018. Many of the new clarifications have been requested by the pension industry over the last year.

The changes to the General Regulation that came into force on May 21, 2019 relate to benefit improvements, the use of letters of credit, the prescribed content of the statement of investment policies and procedures (SIPP), the calculation of the provision for adverse deviations (PfAD), the application of the PBA's contribution holiday rules, the use of a prior year credit balance (PYCB), and the treatment of excess employer contributions to a DB fund.

Clarifying Amendments

Regulation 105/109 amends the General Regulation as follows:

- **Benefit Improvements:** Adds a definition of “lump sum improvement contribution” in respect of benefit improvements in plan amendments that would, but for the lump sum contribution, reduce the solvency ratio or the going concern funded ratio of the pension plan (or both) below the prescribed level of 80%, and clarifies that the benefit improvement provisions of the PBA are not applicable to certain prescribed jointly-sponsored pension plans (JSPPs).
- **Letters of Credit:** Deems that a letter of credit used in respect of funding special payment obligations reduces the plan's solvency deficiency. This amendment is only in effect for a limited period of time and will be revoked effective May 1, 2029.
- **SIPPs:** Clarifies that the requirement to include a plan's target asset allocation for each investment category only applies to assets in respect of DB plans and also does not apply to certain prescribed JSPPs. The requirement to report the target asset allocation relates to the calculation of the PfAD, which does not apply to defined contribution plans or certain prescribed JSPPs.

Calculation of the PfAD

Clarifying amendments have also been made to the provisions of the General Regulation that

prescribe the calculation of the PfAD. Most significantly, the definition of “closed plan”, which, if applicable, increases PfAD contributions, has been amended.

Effective May 21, 2019, a “closed plan” is one that, at the date of the valuation, either:

1. Has no members who have a DB entitlement; or
2. 25% of the members who do have DB entitlements are in a class of employees from which new members are not permitted to join and accrue a DB entitlement.

Prior to this new definition being introduced, the definition of closed plan was broader and applied to “a pension plan at least one portion of which, according to the terms of the plan, does not permit new members to join and accrue defined benefits.” The new definition provides clearer parameters to assist in the determination of whether a plan should be considered a closed plan and reduces the risk of a DB plan being characterized as a “closed plan” where it has been closed to a relatively small class of employees but is otherwise open to new members from the majority of employee groups.

It is unclear if and when Ontario’s new pension regulator, the Financial Services Regulatory Authority (FSRA), will update the guidance published early this year by its predecessor regarding the interpretation of the original “closed plan” definition. FSRA officially became the new pension regulatory in Ontario effective June 8, 2019.

Contribution Holidays and Excess Employer Contributions

Contribution Holidays

As [previously reported](#), on April 11, 2019, the Ontario government released its 2019 Budget and introduced Bill 100, *Protecting What Matters Most Act (Budget Measures), 2019*. [Bill 100 received Royal Assent on May 29, 2019](#) and amended the PBA to clarify that the PBA funding rules that came into effect on May 1, 2018, including those that restrict the availability of contribution holidays for employers, are not intended to restrict the application of a PYCB to reduce normal cost contributions and contributions towards the PfAD.

These clarifications to the PBA were required following the release of a policy by the Financial Services Commission of Ontario (FSCO) on January 23, 2019 regarding contributions made by an employer in excess of the required minimum contribution amount set out in the latest filed actuarial valuation report (Excess Contributions). This January 2019 policy respecting Excess Contributions introduced two changes:

1. It stated that Excess Contributions are not overpayments to a pension plan and cannot be refunded as such; and
2. While continuing to recognize that Excess Contributions are used to establish or increase a

PYCB, it applied the contribution holiday rules to the use of the PYCB, stating that the PYCB could not be used in respect of normal cost contributions, including contributions towards the PfAD, beyond the year in which the valuation is filed.

The second change effectively limited the application of a PYCB to cases where the plan had an actuarial surplus. Historically, a PYCB could be applied regardless of whether or not a pension plan was in a surplus position. Going forward, the most recent changes to the PBA and General Regulation, will allow a PYCB to be applied towards normal cost contributions and will essentially recognize the PYCB as a prepayment of normal costs, rather than a suspension of (or holiday from) contributions.

In addition to the change to the PBA, the General Regulation has also been amended to specify that the the PBA contribution holiday provisions do not apply to prescribed public sector JSPPs or in respect of valuations dated prior to December 31, 2017 or reports filed prior to May 1, 2018 (i.e., before the new DB funding framework came into force). However, actuarial gains not otherwise used may be used to pay annual PBGF assessments in respect of a fiscal year covered by these pre-funding reform valuations/reports.

Excess Contributions

A further provision has been added to the General Regulation to codify a long-standing element of FSCO's policy with respect to the use of Excess Contributions. The General Regulation now expressly permits Excess Contributions made during a "specified period" to reduce payments otherwise required in respect of the remainder of the plan's fiscal year. The specified period is essentially the period between the later of (i) the start of the fiscal year in which the valuation report is filed, and (ii) the start of the year of the valuation date, and the date the report is filed.

This new provision does not apply to JSPPs and also does not apply in the event that the most recently filed actuarial valuation report is filed more than 12 months after the valuation date, regardless of whether a filing extension has been granted by the regulator.

Takeaways and Next Steps

The clarification of the new DB funding rules under the General Regulation are a welcome update for plan sponsors and administrators alike. We will continue to monitor these changes, as well as any additional policies that Ontario's new pension regulator, FSRA, introduces in respect of these recent clarifications.

In the meantime, should you require further information, please consult any member of Hicks Morley's [Pension Benefits and Executive Compensation](#) team