FTR Now

Ontario Introduces Temporary Funding Relief for Defined Benefit Pension Plans

Date: September 28, 2020

Sponsors of defined benefit (DB) pension plans registered in Ontario have been given significant temporary contribution relief as part of the Ontario government's response to the COVID-19 pandemic. On September 21, 2020, Ontario Regulation 520/20 (Regulation) was filed. The Regulation amends Regulation 909 made under the Ontario *Pension Benefits Act* (PBA) to permit temporary contribution deferral for certain eligible DB pension plans, and extend the time over which catch-up contributions following the filing of a new valuation report must be made.

Contribution Deferrals

Employers who sponsor eligible DB pension plans are permitted to elect to defer up to six months of monthly contributions that are due between October 1, 2020 and March 31, 2021. The contributions eligible for the deferral are those for normal cost, the provision for adverse deviations, and special payments to fund going concern and solvency deficits. Each contribution that has been deferred must be repaid in two phases with interest within the timeframes specified in the Regulation, and in all cases, by no later than March 31, 2022. Interest will be calculated at the going concern interest rate or the solvency valuation interest rate, whichever applies in the circumstances, as set out in the most recently filed or submitted report.

Certain DB pension plans are ineligible for the funding relief. These include multi-employer pension plans, jointly sponsored pension plans, and public sector pension plans. Designated plans and individual pension plans are also not eligible. Certain specific, named pension plans are also excluded due to existing special funding arrangements provided under regulations to the PBA. If the plan is otherwise eligible, the deferral is not available if the employer is behind in making its required contributions.

Contributions to defined contribution (DC) pension plans are not eligible for deferral under these rules. Possible relief for DC plans was previously addressed by the Financial Services Regulatory Authority (FSRA) and the Canada Revenue Agency (see our *FTR Now* of May 2020, Canada Revenue Agency Announces Temporary COVID-19 Relief for Registered Pension Plans).

The Regulation includes detailed requirements that must be followed. These include:

- **Filing the Election**: The Regulation requires employers electing to defer contributions to file an election, accompanied by a schedule of payments prepared by an actuary, with FSRA no later than the date on which the contributions for the first deferred month are due. The schedule of payments cannot be amended once filed, unless a new valuation report is filed with a valuation date before March 31, 2021. The election form and schedule are expected to be available soon on the FSRA website.
- **Filing Updates**: The Regulation also requires employers that have made an election to defer contributions to file quarterly payment schedule updates with FSRA. Updates are required until FSRA is informed that all deferred payments have been repaid with interest to the pension plan.

The updates must include a statutory declaration made by an officer of the employer, in a form satisfactory to the Chief Executive Officer of FSRA, indicating that the employer has complied with the payment schedule. A template statutory declaration is available on the FSRA website.

- **Prohibited Activities and Payments**: The Regulation prohibits employers that have made the election from engaging in certain activities until all deferred contributions are repaid with interest. These restrictions are onerous. Of particular importance, employers will not be permitted to pay a bonus to or increase the compensation of an executive of the employer. "Compensation" includes base salary, benefits and perquisites. In its published guidance, FSRA states that it considers a "bonus" to include both short-term and long-term incentives, such as stock option awards, implying that even an award would be prohibited, and not just the cash payments resulting from long term incentive awards. "Executive" is defined in the Regulation to include "C-suite executives", the President, and Vice-Presidents, but also a wide range of employees and office holders holding "any other executive position or office with the employer".

Other prohibited activities include paying dividends, share buy backs, debt repayments on existing loans over and above the regular payment schedule, new loans to shareholders, executives or related persons or entities, and entering into a transaction with a related person or entity in the normal course of business under terms and conditions that are less favourable to the employer than market.

Plan administrators are also prohibited from filing plan amendments to increase pension benefits or ancillary benefits, unless the amendment is made to confer a benefit improvement that is required by law, or the amendment implements a benefit improvement agreed to in a collective agreement before September 21, 2020.

- **Accelerating Repayments**: At any time, an employer may repay the full outstanding amount of deferred payments, with interest, to the pension plan. Once the repayment is made, the regular contribution schedule will again apply.
- **Notifying Members**: The Regulation requires plan administrators to include a statement in the annual statement to active members and biennial statement to deferred and retired members that the employer has elected to defer the payment of certain contributions. The statement must specify the date by which all the deferred payments will be made by the employer, with interest.

In addition, Regulation 521/20 adds several provisions of the Regulation, including the provision regarding prohibited activities, to the schedule of provisions that are subject to administrative monetary penalties.

Catch-Up Contributions

The Regulation also provides that, if a new valuation report is filed after September 21, 2020 and on or before April 1, 2021, any catch-up contributions that are owing to a DB pension plan between the effective date of the new report and the date it is filed can be paid over a 120-day period, rather than over the usual 60-day period. Should you require further information, please contact any member of our Pension, Benefits and Executive Compensation Group.
