

Pension Commission

Update #20 Administrative Issues

Revised January 2002

Reference: *Pension Benefits Act Section 1(1)*

THE PENSION BENEFITS AMENDMENT ACT

Bill 14, The Pension Benefits Amendment Act received Royal Assent on June 28, 1997 and is effective December 1, 1997. This Update is a summary of the changes that affect registered pension plans having members in Manitoba.

Definitions

The definition of a deferred life annuity has been changed to provide that a pension will in no event commence later than the maximum age at which benefits are required to be paid to a member under the Income Tax Act (Canada).

Section 18(2.1)

Plans established and registered after June 24, 1992

This section required defined benefit plans which are filed for registration after June 24, 1992 to contractually specify the ownership of surplus arising under the plan for purposes of its disposition, contractually include or attach to it evidence that a majority of plan members have agreed in writing to the ownership provisions set out in the plan, and contractually provide a mechanism for solving disputes respecting surplus disposition.

The change to this section is intended to clarify that it has application only to newly established defined benefit plans submitted for registration after June 24, 1992, and does not affect existing legal rights or entitlements relating to pre-existing plans that are, due to a spin-off for example, required to be re-registered under the Act.

Should there be any question regarding the application of this section to a plan which must be registered under the Act, the Commission should be contacted.

Section 21(4)

Exceptions to locking-in requirements

Benefits Payable Prior to January 1, 1998

A pension plan may provide for the commutation of benefits upon termination of plan membership which occurred prior to January 1, 1998 of the full pension benefit where:

- (i) the annual pension payable at normal retirement age is less than 4% of the YMPE for 1997, or

- (ii) the commuted value of the pension benefit is less than 4% of the YMPE for 1997.

Further, the plan may also provide for the commutation of pension benefits on the new 4% basis, where the termination, death or retirement occurred prior to June 24, 1992, and the pension benefits was previously locked-in under the \$25.00 per month basis.

Benefits Payable on or after January 1, 1998

A pension plan must provide for the commutation of benefits upon termination of plan membership occurring on or after January 1, 1998 of the full pension benefit where:

- (i) the annual pension is less than 4% of the YMPE in the year in which the termination, death or retirement occurred, or
- (ii) the commuted value of the pension benefit is less than 4% of the YMPE in the year in which the termination, death or retirement occurred.

Plans will no longer have the option of retaining pensions benefits that are less than the above amounts.

Section 21(27)

Eligibility for benefit after resuming co-habitation

Section 21(26) requires that in the event of the death of a member with a spouse or common-law partner who has two or more years of service or membership, the member's spouse or partner must receive the death benefit that must be at least equal to the value of the benefit accrued on and after January 1, 1985 to the member's date of death. In the event that the spouse or partner, as the case maybe, is entitled to receive or has received a division of pension benefits according to Sections 31(2) to (8), they would not be entitled to the benefit under Section 21(26)(a).

The new Section 21(27) clarifies that the exception under Section 21(26) for separated spouses or partners is not intended to prevent surviving spouses or partners, upon reconciliation and resumption of cohabitation, from receiving the death benefit under Section 21(26).

Section 28(6), (7)

Notice to be given of any late payment by employer

Definitions

Where an employer fails to remit pension contributions within 60 days after the date they are required to do so, the "person" to whom contributions were to be remitted must immediately notify the superintendent in writing. A "person" is now defined in Section 28(7) as being the administrator trustee, member of the board of trustees, investment manager or fund holder.

The written advice to the superintendent should include, but need not be limited to, the name of the pension plan, the period of time for which contributions are owing to the plan, the amount of employer contribution owing, and if applicable, the amount of employee contribution and special payments, the name of the employer, the plan registration number, and plan administrator.

Sections 28.1 (1) - (11)

Care and Diligence

Meaning of Administrator
Care, diligence and skill
Special knowledge and skill
Application of subsection (3)
Conflict of interest
Employment of agent
Responsibility for agent
Employee or agent
Benefit by administrator
Member of pension committee
Payment to agent

This new section under the Act sets the standard for the administrator in respect of care, diligence and skill, which must be exercised in relation to the administration and investment of a pension fund.

Meaning of Administrator

The term "administrator" is defined as any person involved in the administration of, or charged with a duty, in respect of a pension plan. It includes the employer who establishes the plan, a plan trustee, a member of a plans board of trustees and a person appointed by the Superintendent to perform the duties of an administrator.

Section 38(1)

Penalty

The minimum and maximum penalties were increased to \$2,000 and \$100,000, respectively.

Section 38(2)

Court to order restitution

Section 38(2.1)

Order of restitution may be filed in Q.B.

Section 38(2) was revised and a new section 38(2.1) added which states that where a person is convicted of an offence in respect of money in, or payable to, a pension plan was lost, the court shall order the person to make restitution in the amount of the loss. The order may be enforced as an order of the Court of Queen's Bench.

This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.