



April 22, 2010

Manitoba's *Pension Benefits Amendment Act* proclaimed into force

The *Pension Benefits Amendment Act* of Manitoba has been proclaimed into force – five years after it received Royal Assent. Although it received Royal Assent in April 2005, the legislation was not enacted at that time because the companion *Pension Benefits Regulation* had to be overhauled first to accommodate the Act's sweeping new provisions. The revised *Regulation* is now complete and was registered by the Manitoba government on March 26, 2010 – paving the way for enactment of the new legislation.

Sponsors and administrators of pension plans with members employed in Manitoba should review their policies, plan texts and administrative procedures to make sure they comply with the new legislation. The changes do not affect the pension plans of federally regulated employers, such as transportation and telecommunications companies and banks.

Actions for affected plan sponsors and administrators should include:

1. Immediately updating benefit calculation and administrative procedures to comply with the new requirements. Most changes go into effect on **May 31, 2010**, but some have other effective dates.
2. Establishing a pension committee to act as plan administrator. This provision applies to most single-employer plans registered in Manitoba, except those with less than 50 members. For existing plans, this change takes effect on **May 31, 2011**, with the deadline for establishing a committee being 120 days after that date.
3. Amending pension plan texts and other affected plan documents. The deadline for filing plan amendments to comply with the new requirements is **December 31, 2011**.

The main changes are outlined below.

Changes effective March 31, 2010

New **portability** provisions went into effect on March 31, 2010. Defined benefit (DB) plans are no longer required to provide for commuted value transfers out of the plan on early retirement or termination of membership if the member already qualifies for early retirement under the plan. A defined contribution (DC) plan must allow a member to transfer the account balance to a prescribed retirement savings arrangement, unless pension payments have already started.

Changes effective May 31, 2010

Benefit entitlements

For members terminating from a plan on or after May 31, **immediate vesting** is now mandatory for all benefits earned since July 1, 1976. In the past, benefits vested after two years of employment (except in the case of Multi-Unit Pension Plans, where benefits vested once the member had 350 hours of employment in each of two consecutive plan years).

The legislation now prohibits the practice of “conditional vesting” in contributory pension plans. Previously, it was possible for contributory plans to provide faster vesting than the statutory minimum, on the condition that the member did not withdraw contributions from the plan. This meant that members who chose to withdraw their contributions (with interest) before the legal vesting date forfeited the employer-funded portion of the benefit. The new rules require immediate vesting of the employer-funded benefit – whether or not the member's contributions are withdrawn.

The change to immediate vesting increases the cost of benefits for short-service members, as well as administrative expenses on an ongoing basis.

Compulsory plan participation is still required for all Manitoba employees in a class covered by the plan. The plan must require that each full-time employee join on a specified date. That date cannot be more than 30 days after the employee has completed a minimum waiting period of up to two years. The plan can set additional participation criteria for part-time employees, which must be one of the following:

- (a) The employee must work at least a specified number of hours (but not more than 700 hours) in each of two consecutive calendar years.
- (b) The employee must earn at least a specified percentage, but not more than 35%, of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years (previously, it was 25%).
- (c) The employee must satisfy either one of criteria (a) or (b).

For the purpose of determining breaks in continuous employment, the maximum period of **temporary interruption in employment** is being extended from 52 to 54 weeks. As a result, plan text definitions for *periods of employment*, *continuous service* and *credited service* should be reviewed and adjusted to comply with the new legislation.

Ancillary benefits become part of a member's pension once he or she has met all the eligibility requirements for receiving them. The member's pension entitlement must include the value of any ancillary benefits the member is eligible for at the time he or she terminates plan membership.

Optional ancillary contributions are now allowed, subject to prescribed rules. A defined benefit pension plan can now let members use locked-in funds to make an optional ancillary contribution that can be used to buy ancillary benefits. Permitted ancillary benefits include:

- disability, bridging or other temporary supplementary benefits;
- pre-retirement death benefits;
- early or postponed retirement benefits;
- joint and survivor pension benefits; or
- cost-of-living adjustments in excess of the prescribed minimums or the plan's regular provisions.

Optional ancillary contributions must be converted to ancillary benefits on an actuarially equivalent basis. This basis must be consistent with accepted actuarial practice established by the Canadian Institute of Actuaries, or with any other basis considered reasonable by the Superintendent and permitted by the federal *Income Tax Act*.

The **"100% rule" for pre-1985 benefits** is now clearly spelled out. When a member terminates from the plan, the portion of the commuted value related to membership before 1985 cannot be less than the member's contributions (with interest) for that period. If necessary, the member's pension must be increased to comply with this requirement.

The **"50% rule" for post-1984 benefits** is also clarified. When a member terminates from the plan, the portion of contributions (with interest) related to membership after 1984 must not be used to fund more than 50% of the commuted value of any benefits earned for service after 1984 and for which the member has made required contributions. The terminating member is entitled to receive the excess, if any. The excess can be:

- received in cash, or
- transferred to a registered retirement savings plan or registered retirement income fund (subject to limits under the federal *Income Tax Act*).

If the plan allows, the excess can also be used to increase the member's pension.

The 50% rule does not apply to voluntary additional contributions, optional ancillary contributions, voluntary member contributions made to purchase past service, or any portion of the pension benefit for which member contributions were not required.

In the past, post-1984 contributions (with interest) were compared to 50% of the commuted value of *all* pension benefits earned for service after 1984 (not just those for which the member made required contributions).

The pension administration systems of contributory plans (particularly those that changed between contributory and non-contributory status in the past) should be adjusted to comply with the new requirements.

The **normal retirement age** must now be specified in the plan text and must be no later than the first day of the month following the month in which unreduced benefits are payable to a member under the Canada Pension Plan. This will affect plans that define the normal retirement age as something other than age 65 – for example, the end of a school or calendar year after reaching age 65.

The new rule also states that a member cannot be forced to retire at the normal retirement age, or any other age. Moreover, a plan cannot stop a member who works past his or her normal retirement date from continuing as an active member and building a pension in the same way as an active member who has not reached his or her normal retirement age.

Early retirement is now subject to a minimum standard prescribed by legislation. A terminating member can start receiving pension payments up to 10 years prior to the normal retirement age. A minimum service requirement is no longer allowed. The actuarial present value of that pension must not be less than the value of the deferred pension that would be payable from the date of normal retirement.

Postponed retirement from a DB plan must provide a member with a pension benefit that is not less than the greater of:

- a pension that is based on the plan formula, taking into account additional benefits earned after reaching the normal retirement age; and
- the actuarial equivalent of the pension that would have been payable had the member retired as of his or her normal retirement date (calculated as of the date the member ceased to be an active member).

The changes for postponed retirement will require amendments to the plan text and to employee communication materials. It will also require changes to calculation systems and administrative processes.

Phased retirement may be provided under a pension plan if the sponsoring employer wishes to enter into an individual agreement with an active plan member. Such an agreement would allow the member to start receiving pension payments while still building benefits under the plan. There are conditions, however:

- The agreement must reduce the member's hours of work and remuneration.
- The member must have already attained his or her normal retirement age, or be within 10 years of reaching it.
- The plan text must provide for the member's pension to be adjusted in a prescribed way when he or she finally retires.

Pre-retirement death benefits are subject to three new rules:

- The value of survivor benefits provided under a plan cannot be less than the commuted value of the member's earned pension for *all* service. Previously, the minimum death benefit was based only on the portion of a member's pension earned after 1984. Including pre-1985 service in the calculation of the death benefit will (for those plans not already doing it) increase plan costs.
- If a member dies before his or her pension starts, the spouse (or common-law partner) will be eligible for a survivor pension only if they were living together immediately before the member's death.
- The right to a survivor pension can be waived by the spouse (or common-law partner) while the member is alive. The waiver must be submitted with prescribed information. The waiver may be revoked before the member's death.

The **post-retirement death benefit** payable to an eligible surviving spouse (or common-law partner) must be a survivor pension equal to at least 60% of the pension payable to the member. This benefit is payable unless the spouse or partner waived his or her right to a benefit *before* the member started receiving a pension.

In the past, the minimum post-retirement death benefit payable to an eligible surviving spouse was a survivor pension equal to at least 66-2/3% of the member's pension. This change brings Manitoba in line with all other provinces.

It's up to plan sponsors to decide if their plan should be amended to match the new minimum for survivor pensions. A plan can decide to maintain the 66-2/3% minimum. If the normal form of pension does not include a survivor pension, and if the minimum joint and survivor pension is calculated on an actuarially equivalent basis, the administrator must adjust the plan's calculation routines to reflect any change to the minimum survivor percentage.

According to the Pension Commission of Manitoba's [Update #10 - 01](#), issued on March 29, 2010, benefits earned to date cannot be adversely affected by a change to the survivor percentage. If the normal form of pension includes an automatic 66-2/3% survivor pension for members with a spouse, a reduction in the normal form to a 60% survivor pension may be possible only for those benefits earned after the effective date of the plan amendment. Additional clarification from the Commission may be needed before implementing such a plan change.

Rules for pension division on spousal relationship breakdown are now clarified. The formulas used to calculate a spouse's (or common-law partner's) share of assets in the wake of relationship breakdown are now prescribed. For defined contribution provisions, it is a "value-added" division; for defined benefit provisions, it is a "pro-rata" division.

Upon written request, the plan administrator must provide the separating or divorcing parties with a statement for division of pension. The written request must specify the separation date. The statement must be provided at no charge and include:

- the estimated value of each party's total entitlement as of the separation date;
- an explanation of the options available; and
- for each option, a summary of the benefits each party would be entitled to receive if he or she exercised that option.

When the division of pension assets takes place, pension entitlements must be updated with interest from the date of separation to the end of the month preceding the settlement date. Under a defined benefit plan, the commuted value must now be updated with interest based on the plan's rate of return.

A joint and survivor pension may be divided into two separate single-life pensions: one paid to the member and one paid to the spouse (or common-law partner). Other forms of pension may be divided into two separate pensions payable in the same form, but with an adjustment to the amount of pension to allow for different life expectancies.

Under the new rules, the parties can still agree *not* to divide a pension or pension benefit credit, subject to prescribed conditions.

Funding of pension plans

Monthly remittances are now required for all minimum funding contributions (in the past, remittances could be quarterly). All amounts must be paid no later than 30 days after the end of the period for which they are payable. Late payments must include interest credited for the period of delay. The administrator (or fund holder receiving remittances) shall immediately notify the Superintendent, in writing, if an employer is more than 60 days late remitting required contributions.

Solvency valuations are subject to new prescribed conditions. Solvency assets are now defined in the Regulation, and must be reduced by the actuary's estimate of plan wind-up expenses. The provision that permits the use of a market-related value of assets if the plan is not being wound up is clarified. A market-related value is intended to stabilize volatility by deferring recognition of extreme market returns over a period of up to five years. A new provision permits the use of solvency gains to reduce the outstanding balance of existing solvency deficiencies, in the same order in which they were established.

Benefit-reducing amendments are now permitted for Multi-Unit Pension Plans (MUPPs). A new provision allows MUPPs to amend the plan to reduce benefits, but only to the extent that the reduction is necessary to meet prescribed solvency tests. All members and beneficiaries affected by the reduction must be notified, and the amendment must be approved by the Superintendent. As in the past, the Pension Commission of Manitoba is still required to cancel the registration of any plan that fails to meet the prescribed tests for solvency.

Non-compliant amendments are void. If a plan amendment submitted for registration is found by the Superintendent to be non-compliant (in full or in part), the plan administrator will be notified by the Superintendent and must adjust or reverse any transactions that have been made based on that amendment (or that part of the amendment that is non-compliant).

Contribution holidays are now restricted. A surplus can be used to reduce employer contributions, but not in full. Furthermore, the amount of surplus remaining in the plan after the reduction must be not less than 5% of the plan's solvency liabilities (as of the last actuarial valuation date).

Surplus refunds to the employer are now subject to specific consent rules. A payment of surplus to the employer may be approved if written consent is obtained from:

- at least 2/3 of active, non-represented members;
- at least 2/3 of non-active, non-represented members; and
- a number of the other beneficiaries (as determined by the Superintendent) who have an absolute entitlement to benefits.

If the members are unionized, written consent is required from each of the bargaining agents representing members in relation to the proposed payment.

When filing a newly established plan for registration, the administrator must provide the Superintendent with satisfactory evidence that a majority of the prospective members have agreed in writing to the plan provision specifying entitlement to surplus.

Transfers

Plan-to-plan transfers, or transfers to a life annuity contract, are allowed only if the administrator of the receiving plan or contract agrees to administer the transferred amount as Manitoba locked-in money. Interest must be credited on the transferred amount up to the end of the month prior to the transfer date. The interest rate is prescribed.

A **one-time transfer of up to 50%** of the pension value to a prescribed Registered Retirement Income Fund or a Variable Benefits account in a defined contribution plan is now permitted for plan members and their surviving spouses (or common-law partners), subject to prescribed conditions. To qualify for such a transfer, a member of a DB plan must end his or her participation in the plan. DC plan members can opt for such a transfer while still an active member. The prescribed conditions are as follows.

- the plan text must include a provision for such transfers;
- the person requesting the transfer must be at least 55 years old;
- the plan administrator must be satisfied that the person has not previously made a one-time transfer; and
- the member's spouse (or common-law partner) must provide written consent.

Unlocking

The conditions for unlocking pension benefits have been expanded, requiring adjustments to administrative procedures and the options offered to terminating members.

The criteria for **small pension unlocking** have been expanded. A pension is now considered small if:

- the annual pension at normal retirement is no more than 4% of the Year's Maximum Pensionable Earnings (YMPE) for the year in which the pension is converted to a cash value, or
- the commuted value of the pension is less than 20% of the YMPE for the year in which it is converted to a cash value.

When a member or other beneficiary is entitled to a small pension, the commuted value must be paid in cash, unless:

- the pension has already started; or
- the member or other beneficiary became entitled to the pension before 1998. In this case, if the member or other beneficiary has not started to receive a pension, the plan may allow them to withdraw the commuted value.

Former members who are **non-residents** and who make written application can now receive their pension entitlement in cash. Their applications must be supported by written confirmation from the Canada Revenue Agency stating that the applicant is a non-resident of Canada for income tax purposes. The consent of the spouse (or common-law partner), if any, is also required if the parties are not living separate and apart when the application is submitted.

Shortened life expectancy. Plan members who, due to a terminal illness or disability, have a shortened life expectancy of less than two years can commute (cash out) their pension. They must provide written notice to the plan administrator. The notice must indicate whether the member has a spouse (or common-law partner) and must be accompanied by the written statement of a physician licensed to practise medicine in Canada certifying that the member has a shortened life expectancy. In the case of a DB plan, the cash value must be determined using actuarial assumptions that do not take the member's shortened life expectancy into account.

Other changes

Multiple amendments. If more than four amendments are made to the plan text, the Superintendent may require that the administrator file a consolidated plan text that incorporates all of the amendments. The consolidated text would have to be filed within 180 days.

Partial plan terminations are not eliminated for the vast majority of plans, but are restricted in one special situation. A new provision for Multi-Unit Pension Plans (MUPPs) states that a suspension or cessation of contributions by a participating employer does not constitute a partial termination of the plan, unless:

- the plan text says it does, or
- the Superintendent declares it (upon application by the administrator).

The new *Regulations* clarify what constitutes the full termination of a plan, as well as the rules surrounding the start or delay of plan terminations.

Audited financial statements are now required if the market value of a plan's assets as of the fiscal year-end is at least \$5-million. An exemption is allowed if all plan funds are held by one insurance company, in the pooled funds of one trust company, or in an annuity contract. Plan administrators must file the financial statements within 180 days of the plan's fiscal year-end, or sooner if requested by the Superintendent.

Disclosure requirements are now more detailed. Annual statements for members of a DB plan with a solvency ratio of less than one must now disclose that ratio (expressed as a percentage). This is in addition to the already required:

- statement that the plan's assets are not sufficient to cover the plan's pension liabilities, and
- confirmation that special payments are being made to make the plan solvent.

If surplus was used to finance employee or employer contributions during the year, the amount of surplus in the plan as of the last actuarial valuation date and the amount of surplus that was used to pay contributions must also be disclosed to members in their annual statements.

Investment policies are now subject to specific rules. If a plan permits members to make investment choices, the administrator must ensure that:

- the plan offers sufficient investment options to enable members to make prudent investment choices;
- the investment options are diversified and involve varying degrees of risk and expected return, and allow the creation of portfolios that are generally well-adapted to the needs of members; and
- the Statement of Investment Policies and Procedures (SIPP) includes a description of the factors that may affect the value of plan assets as a whole, and the relationship of those factors to the types of investment options offered.

If the plan members are not permitted to make investment choices in a defined contribution plan, and all investments are directed entirely by the administrator, the SIPP must contain a description of the risk factors that may affect the value of the assets of the plan as a whole, and the relationship of those factors to the investment policies and procedures.

Retention of plan records is now prescribed. Records are defined as "accounts, books, files, returns, statements, reports, financial documents or other memorandums of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by any other means; and the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate."

Records that are in the possession or control of the administrator, an employer, or any other person other than a member or other beneficiary, must be retained by that person for seven years after the last benefit is paid or the last transaction is recorded.

New plan administrator requirements effective May 31, 2011

One of the most important changes in the new legislation is a requirement that pension plans registered in Manitoba be administered by a pension committee. This requirement applies to most single-employer plans, whether defined benefit or defined contribution. An exception is made for small plans with fewer than 50 members, which must be administered by the employer.

Multi-Unit Pension Plans (MUPPs) and jointly trustee plans must be administered by a board of trustees. A MUPP's board of trustees must have as many trustees representing members as it does representing employers. It must also have at least one trustee representing non-active members.

New pension plans registered on or after May 31, 2010 must comply with the new pension committee requirements immediately. The effective date for existing plans is May 31, 2011.

Pension committees

For pension plans that are administered by a pension committee:

- at least one voting member must be appointed or elected by the active plan members;
- at least one voting member must be appointed or elected by the non-active plan members; and
- one additional non-voting member may be appointed or elected jointly by the active and non-active plan members.

Committee members have prescribed rights and obligations.

Existing plans that are establishing a pension committee for the first time must have their committee in place by September 28, 2011 (120 days after the May 31, 2011, effective date).

Interestingly, although detailed rules are prescribed for appointments or elections of committee members representing plan members, the new rules are silent with respect to employer representatives. Implicitly, it appears that the employer is able to influence the setup and governance of the committee, including the composition of representatives from each party to the pension plan.

Future pension reform

The Manitoba government has announced it will continue discussions with federal, provincial and territorial governments on a number of pension-related issues, including ways to enhance Canada's overall retirement income system. Currently, the Minister of Finance is conducting public consultations on a range of topics including:

- expansion of the Canada Pension Plan (CPP);
- creation of a voluntary defined-contribution supplement to the CPP;
- modernization of pension standards to improve flexibility in pension plan design;
- tax reform changes to the federal *Income Tax Act*; and
- a blend of measures, combining some or all of the above.

The Manitoba Pension Commission will also review options to further improve the funding and solvency of pension plans, as well as portability of pensions for mobile workers. Public consultations will play a key role as these initiatives move forward.

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Halifax
902 492 2822

Quebec City
418 780 1366

Winnipeg
204 988 1586

Barbados
246 228 0865

Montreal
514 395 1188

Toronto
416 429 3330

Vancouver
604 682 1381

Jamaica
876 908 1203

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