

Newsletter

On supplemental pension plans 

Québec 

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Amendments required to bring a pension plan's provisions into conformity with the *Supplemental Pension Plans Act* as it has read since 1 January 2001

The purpose of this document is to inform pension committees on the amendments that must be submitted to the Régie des rentes du Québec for registration no later than 31 December 2001.

Several changes have been made in the elements that must appear in a pension plan text. The required content is mentioned in section 14 of the Act. Plan provisions must be amended to take into account the current provisions of the Act.

Since every plan text is worded differently, we urge you to discuss with your consultants the amendments that you will have to make to your plan.

AMENDMENTS THAT MUST BE MADE TO THE REQUIRED PROVISIONS OF EVERY PENSION PLAN

REFUND OF THE VALUE OF BENEFITS

Section 66

- **The 20% rule**

The plan text must provide that a member who ceases to be an active member is entitled to a refund of the value of his or her benefits where

such value is less than 20% of the maximum pensionable earnings under the Québec Pension Plan for the year in which the member ceases to be an active member. The member may, before payment of his or her pension begins, exercise this right within 90 days following the date on which he or she received the statement referred to in section 113 and, thereafter, every five years from the date on which active membership ceased, within 90 days following the expiry of each five-year period.

The plan text must also indicate that the pension committee may make a refund without any request from the member where the value of the member's benefits is less than 20% of the maximum pensionable earnings for the year in which active membership ceases.

Before making a refund, the pension committee must ask the member in writing to indicate the preferred payment method. If no option is made within 30 days of the sending of such notice, the committee may make the refund in the manner it chooses. The notice to the member must point that out.

(Transitional measure)

Pursuant to section 311.6 of the *Act*, section 66 as it read before amendment continues to apply to members whose active membership ceased before 1 January 2001. The amended version of section 66 also applies to those members. Consequently, such a member may request a refund of his or her accrued member contributions with interest if the member does not have a vested pension under the plan. Such a member may also receive a refund of the value of his or her benefits, even if he or she has vested benefits, if their value is less than 20% of the maximum pensionable earnings for the year in which active membership ceases.

Section 66.1

- **Refund to a non-resident member**

The plan text must provide that a member who ceases to be an active member and whose period of continuous service with the employer has ended is entitled to a refund of the value of his or her benefits under the plan if he or she has not lived in Canada for at least two years.

Note

(Residence must be determined according to the criteria found in the *Civil Code of Québec*. A person ceases to reside in Canada when he or she ceases to live there. The fact that he or she still has personal property or even a dwelling in Canada is not a determining factor in deciding his or her place of residence.)

BENEFITS UNDER THE PLAN

Section 69

- **Deferred pension**

The plan text must provide that any member who ceases to be an active member on or after 1 January 2001 is entitled to a deferred retirement pension that is at least equal to the

normal pension payable for the total credited service under the plan.

Section 71

- **Early pension**

The plan text must be amended so as to provide that any member who ceases to be an active member during the 10 years preceding the date on which he or she will reach the normal retirement age is entitled to an early retirement pension. (That pension is payable for the total credited service under the plan.)

Section 78

- **Postponed pension**

Where contributions are made during a postponement period, the plan text must provide that the additional pension is to be determined according to the actuarial assumptions referred to in section 61.

Section 86

- **Benefit payable in the event of death before payment of the retirement pension begins**

For credited service before 1 January 1990

The plan text must provide that in the case of a death occurring after 1 January 2001, the death benefit related to credited service under the plan before 1 January 1990 is paid **on a priority basis** to the member's spouse, unless the spouse had renounced his or her right to the benefit. In the absence of a spouse, the benefit is paid to the heirs.

Interest accrued between the date of death and payment of the benefit

For deaths occurring after 1 January 2001, a defined benefit plan must provide that the death benefit bears interest at the rate used to determine the value of the benefit. In a defined

contribution plan, the plan text must indicate that the death benefit bears interest at the rate of return obtained on the investment of the pension fund's assets.

Note

(The immediate vesting rule has no effect on the benefit payable for credited service as at 31 December 1989. The value of the benefit must still be at least equal to the member contributions and additional voluntary contributions accumulated by the member, with interest, even where the member would have been entitled to a pension under the plan for such period of service. This is the rule that was in effect before the amendments to the *Act* came into force and it has not been changed. The plan may have a more generous provision, for example, paying the spouse a benefit equal to the value of the deceased member's vested pension for that period of service.)

Section 87

- **Benefit payable payable in the event of death after pension payment has begun**

The plan text must provide that the spouse is entitled to 60% of the member's bridging pension (referred to in section 58 of the *Act*) up to the date on which the member would have ceased receiving it. The plan text must also provide that the spouse is entitled to 60% of the pension whose payment is guaranteed for 10 years that is referred to in section 92.1.

Section 88.1

- **Spouse's renunciation of the death benefit before and after retirement**

The plan text must indicate that the spouse of a member may, at any time, renounce the death benefit provided for in section 86 of the *Act* and the pension provided for in sections 87 and 88 of the *Act*. To do so, the spouse must send the pension committee the information prescribed by regulation. The renunciation can

be revoked, provided the pension committee is informed in writing before the member dies or before the start of payment of the pension to which the member is entitled.

Note

(The spouse may exercise this right notwithstanding the fact that no information is now prescribed by regulation.)

Section 89.1

- **Recalculation of a member's pension**

The *Act* has been amended to allow a member whose spouse loses the right to a joint and survivor's pension under section 89 to apply to the pension committee for a recalculation of the member's pension. In this regard, the plan text must contain the application criteria referred to in section 89.1.

In the case of a divorce, civil annulment of marriage or separation from bed and board and, for de facto (common law) spouses, a cessation of the conjugal relationship and where the effective date of such event is after 31 December 2000, the member's pension must be recalculated as of the effective date of the judgement of divorce, civil annulment of marriage, separation from bed and board or as of the date of cessation of the conjugal relationship. The text must indicate that the amount and the characteristics of the new pension are those of the pension that would have been payable to the member as of the date of recalculation if he or she had not had a spouse when payment of the original pension began. The text should also specify that the amount of the pension paid to the member may not be reduced solely on the basis of the reinstatement.

Moreover, where a member's benefits have been partitioned, the pension committee **must carry out** a recalculation of the member's pension. The pension is determined as indicated above, taking into account the sums granted to the spouse.

(Transitional measure)

Where the benefits of a spouse lapse as the result of a divorce, civil annulment of marriage, separation from bed and board or cessation of a de facto conjugal relationship and the effective date of such event is prior to 1 January 2001, the member may make a similar application to the pension committee. The member's pension will then have to be recalculated as of the date of the member's application.

Section 92.1

- **Pension guaranteed for 10 years**

A pension plan **must offer** a member who is entitled to a pension the option of replacing that pension with a pension whose payment is guaranteed for 10 years, unless payment of the original pension to which the member is entitled is guaranteed for a longer period. The option must be exercised before payment of the member's pension begins.

For the application of this provision, no renunciation of the spouse is required. Where the member has a spouse, the guaranteed pension must be at least a 60% joint and survivor's pension.

Where a member's spouse does not wish to receive a pension equal to at least 60% of the pension whose payment is guaranteed for 10 years, he or she must renounce entitlement in the manner prescribed in section 88.1 of the *Act*.

Note

(The guaranteed pension has no effect on the form of the normal pension provided for under the plan. It is an optional form of pension that the plan must offer. Calculation of the guaranteed pension is based on actuarial equivalence and, where a member has a spouse, the requirement for a joint and survivor's

pension must be taken into account in making the actuarial calculation.

The option applies to all non-optional pensions to which a member is entitled. Thus, a plan that provides for a longer guarantee for the normal pension must nevertheless offer a 10-year guarantee option on the other pensions, in particular on a bridging pension. A 10-year guarantee may not, however, be offered on optional pension forms, such as the temporary pension referred in section 91.1 of the *Act*.)

PENSION CALCULATION METHOD

Section 60.1

- **Additional benefit**

The text of a defined benefit pension plan or a defined benefit defined contribution pension must provide that a member who ceases to be an active member is entitled to the additional benefit provided for under section 60.1 of the *Act*.

(Transitional measure)

For workers covered by a collective agreement, an arbitration award in lieu thereof or a collective agreement rendered compulsory by an order or decree, where such is in effect on 1 January 2001, section 60.1 applies as of the date of expiry of such agreement or award or as of the date of expiry, prolongation or renewal of the order or decree. For plans covering, in whole or in part, workers subject to collective agreements with different expiry dates, section 60.1 of the *Act* applies as of the date of expiry of each of the collective agreements. In such cases, the Régie authorizes plan administrators to amend the plan text as of the latest expiry date of the collective agreements.

Note

(A plan which, on 16 March 2000, had an indexation formula for the deferred pension before retirement, had registered the formula with the Régie before that date and had obtained the Régie's approval of an application for exemption filed with the Régie no later than 31 December 2000 is exempted from the application of section 60.1.

In the case of a plan for workers covered by a collective agreement, an arbitration award in lieu thereof or a collective agreement rendered compulsory by an order or decree, where such is in effect on 1 January 2001, the application for exemption for the workers thus covered must be filed with the Régie no later than the day that precedes the date of expiry of the agreement or sentence or the date of expiry, prolongation or renewal of the order or decree.)

INVESTMENT OF THE PLAN'S ASSETS

Section 168

- **Investments chosen by the members**

Where a plan gives the members the power to determine in whole or in part the investments to be made with the plans assets, the plan must be amended so as to offer at least three investment choices, which must be diversified and have different risk and expected yield levels so that member portfolios can be adapted as much as possible to the needs of each member.

PLAN ADMINISTRATION

Section 147

- **Minimal makeup of the pension committee**

The plan text must specify that the beneficiaries are included in the non-active member group and, as such, may, along with the non-active

members, designate a pension committee member at the annual meeting.

Section 147.1

- **Additional member**

The plan text must provide that the active member group and the non-active member and beneficiary group can each designate an additional, non-voting, pension committee member at the annual meeting.

AMENDMENTS THAT MUST BE MADE TO THE OPTIONAL PROVISIONS OF A PENSION PLAN

Plan provisions that are not part of the plan's required contents must be amended and brought into conformity with the requirements of the Act. Newsletter 14 (January 2001) explains several changes to the Act that may affect such provisions.

This subsection explains some aspects of the amendments made to the Act and refers the reader to certain sections of the Act that may affect the optional provisions of a plan.

CONTRIBUTIONS

Section 44

- **Accrued interest**

The plan text of a defined benefit plan that provides for interest based on the monthly rate obtained on personal, five-year term deposits must be amended and brought into conformity with the minimum requirements provided for in section 44 of the Act.

Section 146.9

- **Contribution holidays**

Where an employer confirms his entitlement to take contribution holidays, pursuant to sections 146.4 and following of the Act, all the provisions related to the appropriation of

surplus assets to the payment of employer contributions must be incorporated into a **specific, easily identifiable section of the plan text.**

BENEFITS UNDER A PLAN

Section 59

▪ **Pension indexation**

The periodic payments of a pension must be equal. However, where a plan provides for total or partial indexation of a pension, payments may be uniformly increased on the basis of an index or rate provided for in the plan text.

Note

(The amendment to the *Act* has the effect of prohibiting any reduction of a pension on the basis of negative indexation.)

Section 61

▪ **Actuarial assumptions provided for in the plan**

The value of the benefits to which sections 60 and 60.1 apply can be determined according to actuarial assumptions that are different than those prescribed in the Régie's regulations, provided such assumptions are determined by the plan and are more advantageous than those prescribed by regulation.

Section 85

▪ **Benefit payable in the event of death before pension payment begins**

Effects of separation from bed and board

Since 1 January 2001, a person who is legally separated from bed and board loses his or her entitlement to a death benefit, even if the judgment of separation was rendered before 1 September 1990.

This rule applies only where death occurs after 31 December 2000 or where payment of a pension begins after that date. (It would be appropriate to mention the rule in the plan text.)

Definition of spouse

Another condition has been added to the definition of "spouse" in section 85 of the *Act*. The birth or adoption of a child during marriage or during a period of conjugal relationship prior to the period existing on the day on which the status of spouse is obtained may allow a person to be recognized as a spouse.

For example, a child is born during the marriage of the child's parents, who later are divorced. The couple resumes the conjugal relationship in the year in which the member dies. The former legal spouse of the member will again qualify as the member's spouse.

Section 91.1

▪ **Temporary pension**

A plan can provide for the payment of a temporary pension to a member or spouse whose age is more than 10 years under the normal retirement age provided for in the plan text. (For example, if the plan so provides, a member aged 50 or that member's spouse could request payment of a temporary pension.) For that purpose, the plan text must provide for the rules prescribed in the second paragraph of section 91.1 of the *Act*.

TRANSFERRING BENEFITS

Section 99

▪ Individual transfer

The 180-day period has been shortened to 90 days. The plan text may also specify that the pension committee is required to make a transfer within 60 days after receiving a request. In the case of a defined contribution plan or the defined contribution component of a defined benefit plan, a non-active member who is 10 years or less under the normal retirement age or who has reach or passed that age may transfer the value of his or her benefits **at any time** prior to the beginning of pension payments.

INFORMATION TO MEMBERS

Newsletter 14 explains the main changes made to the information that members are entitled to receive. It is important to amend the plan text accordingly. For that purpose you should refer to sections 26, 111, 111.1, 112 and 113 of the *Act*.

Please note that the periods referred to in sections 67, 99 and 112 have changed.

PLAN ADMINISTRATION

Newsletter 14 discusses the main rules concerning the designation of an additional member to the pension committee and the committee's right to make recommendations concerning amendments that could be made to the plan. You should be sure that the plan text reflects the main changes made to the *Act* by referring to Chapter XI of the *Act*, that is, sections 147 and following.

EFFECTIVE DATE OF AMENDMENTS TO THE PLAN

Amendments made to bring the plan into conformity with the *Act* take effect on 1 January 2001. However, for workers who are covered by

a collective agreement, an arbitration award in lieu thereof or a collective agreement rendered compulsory by an order or decree in effect on 1 January 2001, section 60.1 applies only as of the date of expiry of such agreement or award or as of the date of expiry, prolongation or renewal of the order or decree.

For additional information on the amendments that must be made to a plan, please contact an information officer by telephone at (418) 643-8282.

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