Newsletter

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A simpler law for financial security after retirement

On 29 November 2000, after more than two years of discussion between the Régie des rentes du Québec and representatives in the fields of employment benefits and pension plans and following public hearings where business people, retirees and unions were heard by parliamentarians, the National Assembly passed Bill 102, *Act to Amend the Supplemental Pension Plans Act*.

The new provisions eliminate the uncertainties that were detrimental to the development of pension plans by setting clear, stable rules for everyone concerning the use of actuarial surpluses. Moreover, active plan members and retirees will be better informed about the administration of their pension plans, and plan administrators' work will be simpler because legislative and regulatory requirements have been eased. Furthermore, young workers, who are often more mobile than older workers, will see an improvement in their situation since they will be entitled, as soon as their employment begins, to the employer's contributions made on their behalf and to increased departure benefits. In addition, retirees will now be able to participate in the administration of their pension plans to a degree unknown in the rest of Canada.

In proposing this important legislative revision, the Québec government wished to strengthen the achievements of the private pension plans that cover more than 620 000 workers and to contribute to the financial security of future generations.

In the coming months, the Québec government will approve new regulations for supplemental pension plans. I encourage you to become familiar with them.

ANDRÉ BOISCLAIR
Minister of Social Solidarity

The *Act to amend the Supplemental Pension Plans Act and other legislative provisions* came into force on 1 January 2001 but some sections have effect from the date of assent (5 December 2000) or as of 1 January 2002.

The *Act* applies to all pension plans from the date of its coming into force. No later than 1 January 2002, pension committees must submit to the Régie des rentes du Québec the plan amendments required to bring pension plans into conformity with the *Act*. Once registered, such amendments will have effect from 1 January 2001. An exception to this date is provided for amendments concerning departure benefits; the exception will be explained in a later section of this document.

The Régie is preparing to amend the regulations so as to ensure application of the *Act*. The new regulations will be submitted to the Government for approval in a few months.

Main points of the reform

Bill 102 was introduced on 16 March 2000. Deliberations in the National Assembly resulted in the passage of 92 amendments to the original bill.

This **Newsletter** (number 14) incorporates the changes that affect the main subjects covered in the **Express Letter** of 6 April 2000, which it replaces.

Certificate of registration

The Régie will no longer issue a certificate of registration when it registers a pension plan or a plan amendment. The certificate will be replaced with a simple notice of registration. The Régie will continue to assign a unique number to each plan that it registers.

Contribution holidays

Employers can confirm their right to take contribution holidays by using an option provided in the *Act*. The option requires an employer to propose an amendment to the plan text and obtain the consents required by law, as well as any consents required by the plan or from a labour union. In the case of a multi-employer plan, the consent of all the employers is required. The employer's proposal must also have the consent of any person or group with which the employer has previously made a written agreement with respect to the use of surplus assets during a plan's existence.

If the employer and the parties whose consent is required are unable to reach an agreement, they may, by mutual agreement, go to arbitration. The arbitrator's decision is binding on all the parties.

Once a plan is amended as a result of exercising this option, the plan provisions with respect to contribution holidays take precedence over any other provision of the plan or any collective agreement and is binding on any person or group that has rights or obligations under the plan.

To increase the openness of plan administration, the *Act* provides that the plan's members (including retirees), beneficiaries and labour unions must be informed of an amendment concerning contribution holidays before it comes into effect.

Under the *Act*, confirmation of the right to take contribution holidays is not compulsory. However, an employer who takes contribution holidays and opts for the status quo may face contestation or legal action.

Increases in benefits

The *Act* introduces three important increases:

- All plan members will be entitled to a

deferred pension at the end of their active membership. The two-year rule and the 45/10 rule have been dropped and replaced with immediate vesting. This measure took effect on 1 January 2001 for members who were active members on that date and will apply to all their years of service, even service credited before 2001.

- A new rule sets a minimum for the calculation of the value of departure benefits. It provides that the value of a departure benefit must be at least equal to the higher of the following two values:
  - the value of the deferred pension under the plan's provisions;
  - the value of a pension determined by assuming that it is indexed to 50% of the increase in the Consumer Price Index (CPI) (with a maximum annualized rate of 2%) between the date on which plan membership ceases and the date on which the member's age becomes 10 years under the normal retirement age under the plan.

  Except where contrary provisions take precedence, this measure applies to pension benefits vested to a member under the plan for credited service related to a period of employment after 31 December 2000.

  However, for workers subject to a collective agreement in force on 1 January 2001, the measure will not apply until the expiry of the agreement.

  A pension plan is exempt from the measure if on 16 March 2000, it had a provision that the deferred pension under the plan is indexed before retirement according to a formula different than the formula in the *Act*, provided the formula is approved by the Régie following an application thereto by the pension committee.

  In the case of workers who are not subject to a collective agreement, the application had to be filed with the Régie no later than 31 December 2000. For workers subject to a collective agreement in force on 1 January 2001, the application may be submitted no later than the day preceding the expiry of the collective agreement.

- Member contributions to a defined benefit plan bear interest at a rate equal to the pension fund's rate of return. This measure applies to interest credited as of 1 January 2001 on the accrued value of contributions as at 31 December 2000 and on all future contributions.

  However, where provided by the plan and to the extent that member contributions are related to refunds or fully insured benefits, such contributions may bear interest at the monthly rate for personal, five-year term deposits in chartered banks.

Other measures

- Plans in which membership is optional and which are limited exclusively to persons connected with the employer (within the meaning of paragraph 3 of section 8500 of the *Income Tax Regulation*) are, except for a few provisions, no longer subject to the *Supplemental Pension Plans Act*. However, benefits accrued in such plans continue to be included in the family patrimony and may be subject to partition following a breakdown in the conjugal relationship.

  The measure applies to new plans that meet the conditions set in the *Act*. Existing plans may be exempted from the application of the *Supplemental Pension Plans Act* on written application to the Régie by the pension committee, if they meet certain conditions, including the consent of all the plan's members and beneficiaries.

- Plan membership for part-time workers may be optional even if membership is compulsory for full-time workers.

- Within 60 days of being informed that a member has ceased to be an active member, the pension committee must provide him or her with a statement of cessation of active membership. The member can exercise his or her right to transfer the value of his or her benefits within 90 days after receiving the statement. The pension committee has 60 days after receiving a transfer request to make the transfer.

- A member whose active membership ceases is entitled to a refund of the value of his or her benefits if they are less than 20% of the maximum pensionable earnings under the Québec Pension Plan. The member can exercise that right as long as payment of his or her pension has not begun.

  The pension committee can refund such benefits as provided for in the *Act* if it sends a prior notice to the member asking for his or her instructions as to the payment method. If the member does not reply within 30 days, the committee may make the refund.

- A member who is no longer an active member and whose employment has ceased is entitled to a refund of the value of his or her benefits if he or she has not resided in Canada for at least two years.

- Every plan member or worker eligible for membership must receive a written summary of the main advantages offered by membership in the plan.

- Where a plan provides for a reduction of a member's pension to take into account a retirement pension paid under the Québec Pension Plan or the Canada Pension Plan (i.e., direct or indirect integration), any document concerning benefits payable under the plan that is provided to a member, beneficiary or worker eligible for plan membership must mention the reduction and the method used to calculate it.

- A compulsory annual meeting is still required and now beneficiaries must also be invited to the meeting.

- The pension committee must send an annual statement to each plan member and beneficiary within nine months after the end of the plan's fiscal year. The statement must be accompanied with a summary of any amendments made to the plan during the preceding fiscal year and a brief description of the resulting rights and obligations.

  Where a pension committee has been informed that the non-active members or beneficiaries have formed an association to represent them, the pension committee must include with the annual statement a notice giving the name and address of that association.

  The pension committee is not required to send an annual statement to a member who has already received a statement of cessation of active membership that indicates his or her benefits as at a more recent date.

- The *Act* grants to each of the groups constituted, respectively, of a plan's active members, non-active members and beneficiaries the right to designate one voting member each to the pension committee at the annual meeting. Each group can also designate an additional, non-voting, member who will have the same rights as the other committee members except the right to vote.

- A pension committee may, at any time, submit to the person or group having the power to amend the plan its recommendations as to amendments that could be made.

The obligation to inform the active plan members prior to applying for registration of an amendment is extended to the non-active members.

Instead of sending a written notice to each of them, the pension committee may, with some exceptions, have a notice published in a daily newspaper circulated in the places where at least half the members live. The pension committee may meet its obligation to the active plan members by sending a notice to the employer, who must post it in plain view in the workplace. These methods of providing information no longer require an authorization from the Régie.

- At the time of a family mediation in anticipation of the institution of procedures for divorce or separation from bed and board, married spouses have the right to obtain, on written request to the pension committee, a statement of the value of the benefits accrued under a pension plan. The information that must be included in the statement will be determined by regulation.

- Where a conjugal relationship has ended, de facto (common-law) spouses may, in the following year, agree in writing to the partition of the benefits accrued under a pension plan. This right extends to sums that have been transferred to an authorized instrument, notably a locked-in retirement account (LIRA), a life income fund (LIF) or a life annuity contract.

- Where a plan member's retirement pension was determined by taking into account the spouse's entitlement to a joint and survivor's pension and where that spouse's entitlement has lapsed because of a breakdown of the conjugal relationship during the retirement period, the member may ask that the amount of his or her pension be recalculated on the basis of the pension to which he or she would have been entitled if there had been no spouse.

- The death benefit before retirement must be paid as a matter of priority to the surviving spouse without regard to whether the benefit is related to service credited before or after 1 January 1990. Furthermore, the spouse can now renounce the death benefit.

- From now on, entitlement to a death benefit does not exist where a judgment of separation from bed and board took effect before 1 September 1990.

- The new measure that requires immediate vesting eliminates the need for partial terminations. However, members whose active membership ceased within three years of a plan's total termination (but after 31 December 2000) and whose benefits have been paid are entitled to be included in the distribution of any surplus assets. That right applies regardless of the reason for cessation of plan membership just as it applies to all the other plan members and beneficiaries who are entitled to a share of any surplus assets as at the plan's termination date.

  Members whose active membership ceased before 1 January 2001 and who are affected by a total termination continue to be entitled, in most cases, to a share in any surplus assets following total termination.

- The termination procedure has been thoroughly revised and simplified. To take into account the elimination of partial terminations, specific rules govern the withdrawal of an employer who is party to a multi-employer plan.

- Plan members and the employer are no longer required to designate a representative as soon as an application for arbitration is made concerning allocation of a plan's

surplus assets following total termination. The pension committee now has the responsibility of designating the arbitration body and the arbitrators. The committee must act by a unanimous decision of the committee's voting members.

- Any share of surplus assets received after a pension plan's termination is transferable and subject to seizure.

- Where a plan authorizes members to designate how some or all of their pension credits are to be invested among the available investment options, the plan must offer at least three investment options allowing the constitution of portfolios generally adapted to the members' needs. All placement options offered must be in conformity with the new rule no later than 31 December 2001.

- A plan's assets may not be used to guarantee obligations other than those of the plan. Unless, under the circumstances, it would be reasonable to act otherwise, a pension committee must try to constitute a portfolio diversified so as to minimize the risk of large losses.

  The assets of a pension plan may not, directly or indirectly, be invested in a proportion greater than 10% of their book value in securities controlled by the employer.

  The administrator of a plan whose investments are not in conformity with the *Act*'s new rules has five years as of 1 January 2001 to bring its investments into conformity.

- Where it is proposed to divide a plan that comes into force after 31 December 2000 or that has been amended to confirm the employer's right to use some or all of the plan's surplus assets to offset employer contributions, the Régie cannot authorize the division unless the plan to which a portion of the divided assets are to be transferred has contribution holiday provisions that are identical as to their effects to those in the plan from which such assets come.

- The Régie can authorize a merger even if the members of the absorbed plan have not been consulted if the provisions of the absorbing plan with respect to allocation of surplus assets following termination are more advantageous for the members and beneficiaries than the pertinent provisions of the absorbed plan.

  Moreover, if either the absorbing plan or the absorbed plan comes into force after 31 December 2000 or has been amended to confirm the employer's right to use some or all of the plan's surplus assets to offset employer contributions, the merger cannot be authorized unless, with respect to the absorbed plan, the agreement of all those whose consent is required to confirm such an amendment has been obtained.

  If the merger is authorized, only the provisions of the absorbing plan with respect to the employer's right to use some or all of the plans surplus assets to offset employer contributions and to the allocation of surplus assets in the event of termination are applicable to the members and beneficiaries of the absorbed plan.

- The actuarial assumptions to be used to calculate the value of members' and beneficiaries' benefits will from now on be established by regulation. Nevertheless, that value may, with the Régie's authorization and on the conditions it sets, be determined according to actuarial assumptions made by the plan.

- Pension committees must send the Régie their report on the actuarial valuation within nine months of the date of the valuation. A plan's funding cannot be based on an actuarial valuation report unless the report has been filed with the Régie. Moreover, a report that has been filed with the Régie cannot be changed or replaced except where required by the Régie or with the Régie's authorization and on the conditions it sets.

- The power granted the Régie allowing it to enter into agreements with other governmental bodies has been broadened. The Régie plans to use that power to reach an agreement with the Canada Customs and Revenue Agency (CCRA) that would allow plan administrators to file a single annual information return containing all the information required by both the Régie and the CCRA.

- Several transitional provisions contained in the *Supplemental Pension Plans Act* when it came into force in 1990 have been revoked.

This issue of the **Newsletter** covers only some of the changes brought in by Bill 102. In the coming months, the Régie will publish other documents to explain further the changes brought in by the bill.

You are invited to consult all the new amendments, which are contained in an office consolidation of the *Supplemental Pension Plans Act* that is available on the Régie des rentes du Québec's Internet site at the following address:

www.rrq.gouv.qc.ca

Writer: Chantale Buies

Translator: K.-Benoît Evans, C.Tr.

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For more information, contact our:

Information Officer

Direction des régimes
de retraite
Régie des rentes du Québec
Case postale 5200Québec
(Québec)
G1K 7S9
Telephone: (418) 643-8282
Fax: (418) 643-7421

http://www.rrq.gouv.qc.ca