

# Newsletter

# express

Information bulletin for supplemental pension plans

27 April 2001

## **Pension plan termination: a quick survey of some of the amendments made to the *Supplemental Pension Plans Act***

On 29 November 2000, the Québec National Assembly passed the *Act to amend the Supplemental Pension Plans Act and other legislative provisions*. The *Act* makes important changes in the rules for pension plan termination. In general, the new rules apply where the effective date of a plan's termination is after 31 December 2000.

This issue of **Newsletter Express** is intended to give information on the main changes that affect the rights and obligations of pension committees and employers and to ensure that plan terminations are carried out in accordance with legal requirements and the rights and obligations of all parties involved.

### **Written notice of termination**

Under the new legislative provisions, the employer and, in the case of a multi-employer plan, the employers as a whole, conserve the right to terminate a pension plan to which they are parties unless they are prevented by an agreement. The employer must send a written notice of termination:

- to all the affected members and beneficiaries;
- to every certified association representing members;
- to the pension committee, and
- to the insurer, if applicable.

A notice is required in all cases, even where a plan is established pursuant to a collective agreement.

The notice must include the date of the plan's termination and indicate the affected members and beneficiaries. It is important to note that where a plan termination is caused by a plan division, merger, disposal or closure of the enterprise or a part of the enterprise, the affected members must include all those whose active membership ended between the date on which they were informed of the event in question and the date of the plan's termination. For example, suppose a plan is terminated following the closure of a factory on 30 June 2001. The notice of the closure was made on 31 March 2001. Therefore, all members whose active membership ended between 31 March 2001 and 30 June 2001 are affected by the plan's termination even those whose benefits were paid before the termination date.

## **A plan's termination date**

The employer sets a plan's termination date. However, the date set must respect the new legislative rules. Thus, unless the active members give their written consent, the termination date must respect the following conditions:

- it may not be before the date on which collection of member contributions ceased, and
- it may not be more than 30 days prior to the date on which the termination notice was sent to the active members.

For example, if the employer wishes to terminate a plan as at 31 March 2001, which is the date on which collection of member contributions ceased, the written notice of termination to the active members must be sent no later than 30 April 2001. If the notice is after that date, for example, sometime in June, the employer must obtain the consent of the active members for the termination to be effective as at 31 March 2001.

Moreover, the termination date may not be after the day preceding the one on which the benefits of the last member or beneficiary were paid. Consider the example of a plan that has only one member and that member is an active member. If the decision to terminate the plan follows the death of that member, the termination date must be prior to the date on which the death benefit was paid to the spouse or beneficiary.

## **Actions taken following receipt of the termination notice by a pension committee**

As mentioned above, the employer must send a written termination notice to the pension committee. Following the date on which the committee receives the notice, certain actions must be taken by the committee and the employer at specific times.

1. The pension committee must send a declaration of termination within 15 days following the date on which the committee receives the written notice of termination. The declaration must be sent:
  - to the Régie des rentes du Québec;
  - to the employer, and
  - to every certified association representing members.
2. Within 90 days following receipt of the written notice of termination, the pension committee must:
  - have a termination report prepared and send it to the Régie with a copy to the employer and to every certified association representing members;
  - send statements of benefits to the members and beneficiaries, and
  - have a notice published in a daily newspaper.
3. If the termination report shows that there are surplus assets, a period of 150 days begins on the date on which the pension committee received the written notice of termination. During that period, the employer must take certain steps for the allocation of the surplus.

Under certain circumstances, the *Supplemental Pension Plans Act* grants the Régie the power to terminate a plan. In such a case, the periods allotted are determined as of the date on which the pension committee receives the Régie's decision to terminate the plan.

## Declaration of termination

The pension committee must send a declaration of termination within 15 days following the date on which it receives the written notice of termination. The contents of the declaration will be determined by regulation. The purpose of the declaration is to confirm that the legal requirements have been met and to inform the various persons concerned of certain important dates. The declaration must cover the following subjects:

- the employer's right to terminate the plan;
- respect of the legal requirements concerning the termination date and the written notice;
- the date on which the pension committee received the written notice of termination.

Until the regulation is adopted, the pension committee should provide that information in accordance with [the declaration of termination example](#) that is enclosed with this **Newsletter Express**.

## Termination report, statements of benefits and public notice

Sending the termination report and the statements of benefits and publishing the notice are subject to specific rules. For example, various persons concerned have the right to present their views in writing. Thus, a period for making comments is granted to members and beneficiaries when statements of benefits are sent to them. That period allows them, for example, to have corrections made to any errors affecting the value of their benefits. All the rules can be found in the *Act* and the *Regulation respecting supplemental pension plans*.

In the coming months, new regulations will be submitted to the Government for approval so as to make it possible to apply the *Act* to the contents of termination reports and statements of benefits. In the meantime, the Régie expects pension committees to continue to respect the provisions of the current regulations, adapted as necessary.

## Allocation of surplus assets

Where a termination report shows the existence of surplus assets as at the date of the plan's termination, the employer has a period of 150 days to take certain steps with respect to the allocation of the surplus. That period begins on the date on which the pension committee receives the written notice of termination. The terms and conditions that govern the allocation of surplus assets upon plan termination are determined:

1. in accordance with an agreement reached by the employer and the members and beneficiaries under the consultation procedure provided for in the *Act*;
2. where a plan is established pursuant to a collective agreement, in accordance with:
  - either a joint declaration made by the parties to the collective agreement for the purpose of applying the pertinent provisions of that agreement;
  - or an agreement reached by the parties to the collective agreement.

The scope of such a declaration or agreement is limited to the plan members who are subject to the collective agreement. An agreement of the type mentioned in point 1 must be reached by the employer, on the one hand, and all other members and the beneficiaries, on the other hand;

3. in accordance with a declaration by the employer that gives consent to the allocation of the entire surplus to the members and beneficiaries, pro rata to the value of the benefits of each of them.

Before expiry of the 150-day period and with the consent of all concerned parties, the employer can resort to arbitration.

**Writer:**

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**Where an employer fails to make an allocation proposal before the expiry of the 150-day period, he is deemed to have renounced any entitlement to the surplus assets.** In such case, the surplus is allocated automatically by law to the members and beneficiaries and is distributed among them pro rata to the value of the benefits of each of them. This rule does not apply to plans established pursuant to a collective agreement. For such plans, the *Act* provides instead recourse to arbitration to determine allocation of the surplus.

**Translator:**

**K.-Benoît Evans, C.Tr.**

In a certain number of situations, the *Act* imposes recourse to arbitration to determine the allocation of surplus assets. One situation is where an agreement proposed by the employer is rejected by the members and beneficiaries. If no one (including the employer) applies for arbitration within 60 days after entitlement to arbitration is obtained, the pension committee must make an application for arbitration. In such case, the employer is deemed to have renounced any disputed portion of the surplus, that is, any portion of the surplus assets whose allocation has not already been settled by an agreement or declaration.

### **The Régie's order-making powers**

The new termination procedure initially provides for a minimum involvement by the Régie. Thus, the Régie no longer has to render an official decision, for example, to confirm the employer's decision to terminate a plan or to approve a termination report. Nevertheless, the *Act* grants the Régie broad order-making powers. The Régie can order a pension committee to suspend payment of the members' and beneficiaries' benefits for a given period of time. The Régie can also order the pension committee to conform to any regulatory measure that the Régie indicates where the contents, sending or publication of a document is not in conformity with statutory or regulatory requirements. Orders made by the Régie specify the various actions that must be taken and the deadlines that must be met.

### **Transitional measures**

Under the *Act's* transitional measures, the termination rules in effect on 31 December 2000 continue to apply to plan terminations in certain cases.

Thus, where termination occurs following a decision of the employer, the old termination procedure applies in the following situations:

- to matters pending before the Régie on 31 December 2000, that is, in cases where the Régie had received notice of a plan termination before 1 January 2001;
- to plans whose termination date is before 1 January 2001, to the extent that the members are duly informed in writing and the Régie confirms that the termination date is, in fact, prior to 1 January 2001.

Where a plan termination follows a decision of the Régie, similar transitional rules apply. In all cases where the Régie terminates a plan, it will specify the applicable procedure and the actions that must be taken by the plan administrator.

For more information,  
Contact our

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# DECLARATION OF TERMINATION OF A PENSION PLAN

(Termination at the request of the employer who is a party to the plan)

## Section A: Identification of the plan

Plan name: \_\_\_\_\_  
\_\_\_\_\_

File number assigned by the Régie: \_\_\_\_\_

## Section B: Certificate from the pension committee

I, the undersigned \_\_\_\_\_, \_\_\_\_\_  
(name) (administrator or mandatary of the administrator)

of the plan mentioned in section A (hereinafter the "Plan") do hereby declare that the Plan has been terminated and that the termination date is \_\_\_\_\_  
(day) (month) (year).

I hereby certify that:

1. The termination follows a decision made by the employer who is a party to the Plan (by all the employers who are parties to the plan in the case of a multi-employer plan);
2. To the best of my knowledge, the employer or employers are not prevented by any agreement from terminating the Plan;
3. The employer or employers made known the decision to terminate the Plan by means of a written notice (a copy of which is hereto attached) which, to the best of my knowledge, was sent to all the affected members and beneficiaries (*that is, all the members and beneficiaries of the Plan whose benefits had not been fully paid prior to the termination date and, if the termination of the Plan results from a division, merger, disposal or closure of the enterprise or of any part of the enterprise, all the members whose active membership ended during the period from the date on which they were informed of the event in question and the termination date*), to every certified association representing members, to the pension committee and, if applicable, to the insurer;
4. The notice mentioned in paragraph 3 of this Declaration indicates the name of the employer, the name of the Plan, the file number assigned by the Régie, the Plan's termination date and the members and beneficiaries affected;
5. The termination date mentioned above is not after the day that precedes the day on which the benefits of the last member or beneficiary of the Plan were fully paid;
6. The termination date (*check one the following two cases*),
  - is neither before the date on which collection of member contributions ceased nor before the date that precedes by 30 days the sending of the termination notice to the active members;
  - is before the date on which collection of member contributions ceased or the date that precedes by 30 days the sending of the notice of termination to the active members, but each of the members whose active membership ended at the time of termination or thereafter has consented to termination of the Plan as at the termination date mentioned above, and the pension committee can produce the consent documents to the Régie on demand;
7. The pension committee received the written notice of termination from the employer (or employers) on

\_\_\_\_\_  
(day) (month) (year).

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

Encl.: copy of the written notice of termination