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SECTION: Refund of Employer Overpayment  
INDEX NO.: R350-100  
TITLE: Notice To Members A Necessary Pre-Condition  
- PBA, 1987 ss. 79(4)\*  
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### **Refunds of Employer Overpayment to Pension Fund**

There are certain situations in which an employer may be considered to over-contribute to a pension fund for the purposes of subsection 79(4) of the *Pension Benefits Act*, 1987 (the "PBA") including where:

- 1) the employer contributes on the basis of an actuarial report for which the effective date has passed but a new report is not yet filed; for example:
  - the employer pays post-retirement increases to retirees from general revenues in anticipation of an enabling amendment to the plan; or
- 2) otherwise, where payments have been made directly by an employer which should have been made from the pension fund; for example:
  - the employer may be considered to have over-contributed notwithstanding that there may be a solvency or ongoing funding deficiency in the pension plan.

**The Commission has determined that a requirement of notice to members is necessary for any application made under subsection 79(4) of the PBA, 1987** with respect to refunds of employer overpayments. The following administrative practice summarizes the steps for giving notice:

1. Before giving notice, the applicant shall submit a copy of the notice to the Superintendent with a statement identifying all persons to whom it is proposed that notice be given and a description of the manner proposed for distribution of the notice.

2. The Superintendent shall advise the applicant in writing of the adequacy of the contents of the notice, and will confirm the appropriateness of those persons to whom it is proposed notice be given and the method of distribution.
3. Contents of notice to plan members include:
  - name of the pension plan and provincial registration number;
  - review date of the actuarial report provided with the application, if applicable;
  - the funding deficiency on both an ongoing and solvency basis, if applicable;
  - the authority for refund of employer overpayment (in plan text, trust agreement and legislation);
  - a statement to advise plan members that submissions concerning the application may be made in writing to the Registrar of the PCO within thirty days after receipt of notice; and
  - a statement to advise plan members that copies of the actuarial report, if applicable and any other pertinent material filed with the Commission in support of the application may be reviewed at the offices of the employer and at the Pension Commission of Ontario (an appointment should be made); and with information as to how copies of the documents may be obtained.
4. Notice shall be given to:
  - each member of the pension plan to which the pension fund relates;
  - each trade union that represents members of the pension plan;
  - each person who is entitled to a deferred pension under the pension plan;
  - the advisory committee established in respect of the pension fund; and
  - any other individual who is receiving payments from the pension fund

except where to give such notice is considered impractical or unnecessary in the specific circumstances of the case.
5. Notice shall be sent:
  - by prepaid first class mail addressed to the most recent address of the person on the records of the employer or Administrator

except where to give notice in such a manner is considered impractical or unnecessary in the specific circumstances of the case.
6. The application for refund of employer overpayment to the pension fund under subsection 79(4) will include in addition to the supporting documentation:
  - a certified copy of the notice that was given;
  - details of the classes of persons to whom the notice was given;
  - the method of distribution of the notice;
  - the date on which notice was given.

**Note:** The factual submissions under which applications pursuant to subsection 79(4) may be made do not include those arising from the new requirement of the *Income Tax Act* (Canada) that any forfeited amounts in a defined contribution pension plan must be refunded to the employer or reallocated to the members. A forfeited amount is one to which a plan member has ceased to have any rights, such as an employer's contributions to a member's pension benefits when the member terminates employment but is not vested.

### **Refunds of Employer Overpayment to Pension Fund**

*In the PCO Bulletin, Volume I, Issue 2 May 1990 issue, an administrative practice (on page 5) outlined the staff position with respect to a refund of employer overpayment to a pension fund. Paragraphs were incorrectly located in the layout of the article. Accordingly, it has been revised and appears below\* to assist PCO Bulletin readers.*

#### **Refunds of Employer Overpayment to Pension Fund**

There are certain situations in which an employer may be considered to over-contribute to a pension fund for the purposes of subsection 78(4) of the PBA, 1990 including where:

- 1) the employer contributes on the basis of an actuarial report for which the effective date has passed but a new report is not yet filed; or
- 2) otherwise, where payments have been made directly by an employer which should have been made from the pension fund.

In such circumstances, the employer may be considered to have over-contributed notwithstanding that there may be a solvency deficiency or going concern unfunded actuarial liability in the pension plan.

The Commission has determined that a requirement of notice to members is necessary for any application made under subsection 78(4) of the PBA, 1990 with respect to refunds of employer overpayments. 1987 c.35, s. 79

\* This is not the full administrative practice. The practice printed in the May 1990 issue continues summarizing the requirements for giving notice. Because of the length of those notice requirements, they are not reprinted here. Please refer to page 6 of the May 1990 *PCO Bulletin*.

\*PBA, R.S.O. 1990 s. 78(4)

*This policy has been updated by R350-101.*