Knowledge & Insights

MORNEAU SHEPELL

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In this issue

Quebec Bill 176: Differences in treatment with respect to pension plans and employee benefits and other amendments to the *Act respecting labour standards*

Bill 176, *An Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance*, was introduced to the Quebec National Assembly by Dominique Vien, Minister responsible for Labour, on March 20, 2018. This bill affects all employers who have employees in Quebec, except those under federal jurisdiction.

As expected (see December 2017 *News & Views*), the bill prohibits differences in treatment as regards pension plans or other employee benefits based solely on the hiring date of employees who perform the same tasks in the same establishment. It is important to note that existing difference in treatment clauses may continue to apply. Also, it will still be possible to establish such clauses between now and the date the bill comes into force.

The bill does not specify what constitutes a difference in treatment. It also does not specify, with regard to the possibility of introducing new plans or programs that establish a distinction based on hire date, what would be considered equivalency with existing plans or programs.

As noted, the new rules will apply to employees in Quebec (except those under federal jurisdiction) including any employee who is a member of a pension plan registered outside Quebec. This means that an employer who has employees in different provinces, and wishes to amend the plan provisions for new employees, may end up with different provisions for employees in Quebec.

Recourse is provided for employees who believe they have been the victim of a prohibited distinction with respect to pension plans or other benefits. An employee may file a complaint with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) within 90 days of the distinction becoming known to the employee. The complaint may be referred to the Administrative Labour Tribunal (ALT) by the CNESST. The ALT may render any decision it believes fair and reasonable, including:

- order that the distinction no longer be made;
- order that an employee be made a member of a pension plan, or make other employee benefits applicable to the employee;
- order the employer to pay the employee an indemnity for the loss resulting from the distinction.

Leaves of absence during which participation in pension and group benefit plans must be maintained

In other amendments of interest to the *Act respecting Labour Standards*, certain leaves of absence require continuation of the employee's participation in pension and group benefit plans, if the employee pays the employee portion of required contributions, namely:

- Unpaid leave of absence of not more than 16 weeks over a period of 12 months where the employee must stay with a relative[1] or a person for whom the employee acts as a caregiver, as attested by a professional working in the health and social services sector, because of a serious illness or a serious accident. Previously, this period of leave was not more than 12 weeks over a period of 12 months. Where the relative or person is a minor child, the period of absence is not more than 36 weeks over a period of 12 months.
- Unpaid leave of absence of not more than 27 weeks over a period of 12 months where the employee must stay with a relative,[1] other than the employee's minor child, or a person for whom the employee acts as a caregiver, as attested by a professional working in the health and social services sector, because of a serious and **potentially fatal** illness, attested by a medical certificate.
- Unpaid leave of absence of not more than 104 weeks by reason of the death of the employee's minor child.

Comment

Employers should check the wording in their pension plan texts to determine whether the leaves of absence required under the *Act respecting labour standards* are adequately covered. Employers who are contemplating plan changes that could be considered differences in treatment may wish to consider adopting them before the new law is implemented. The government indicates that it wishes to adopt Bill 176 by the summer. We will keep you informed of further developments.

1 The bill also adds a definition for "relative" and includes, in addition to the employee's spouse, the child, father, mother, brother, sister and grandparents of the employee or the employee's spouse, as well as those persons' spouses, their children and their children's spouses.

Quebec Bill 174 amends rules for maternity, parental and paternity leaves

On March 20, 2018, the Quebec Minister of Employment and Social Solidarity has introduced Bill 174, *An Act mainly to relax the parental insurance plan in order to promote better family-work balance*. The proposed changes will amend the *Labour Standards Act* to extend the period within which maternity, paternity, parental or adoption benefits can be paid, as well as extending the maximum period of maternity leave to 25 weeks.

Among other things, Bill 174 proposes to amend the *Labour Standards Act* as follows:

- The maximum period of maternity leave will increase from 18 consecutive weeks to 25 consecutive weeks.
- The latest end date for parental leave will be extended from 70 weeks after the birth or adoption to 104 weeks after the birth or adoption. The maximum period of parental leave for the first parent will remain at 52 weeks.
- The latest end date for paternity leave will be extended from 52 weeks after the week of the birth or adoption to 104 weeks after the week of the birth or adoption. The maximum period of paternity leave will remain at 5 weeks.

During these types of leaves, a Quebec employee's participation in group insurance and pension plans may not be affected by his or her absence from work, subject to regular payment of the employee's contributions under those plans. This means that employers will also have to contribute to those plans for a potential additional 7 weeks of maternity leave in respect of Quebec employees if the employee decides to pay her own contributions.

Ontario Budget

The Ontario Budget was released on March 28, 2018, in advance of the provincial election scheduled for June 7, 2018. The Budget includes several updates and announcements relating to pension plans, with a focus on underfunded pension plans sponsored by financially distressed employers. The Budget also includes a number of significant announcements relating to publicly funded drug and dental coverage for Ontarians, as well as new investments in mental health initiatives, and new restrictions on the Employer Health Tax exemption.

Ontario pension funding reform measures

The Budget simply states that public feedback on the proposals released in December 2017 is being considered. Our understanding is that the government intends to adopt new regulations prior to the election.

Target benefit multi-employer pension plans

In June 2017, the government announced a new framework for collectively bargained multi-employer pension plans (MEPPs) to offer target benefits. The government is planning to consult on key design features of the new framework this spring. Additionally, to allow time for plans to transition to the proposed new framework, the government intends to extend the temporary funding rules currently in place for specified Ontario MEPPs.

Pension Benefits Guarantee Fund

The government has passed, but not yet proclaimed into force, *Pension Benefits Act* amendments to increase the Pension Benefits Guarantee Fund (PBGF) guarantee by 50 per cent from $1,000 to $1,500 per month, and eliminate the age and service eligibility requirements for PBGF coverage. The government will introduce legislative amendments that would make these changes retroactive to plans with a wind-up date on or after May 19, 2017, when the new funding framework was first announced. As a result, pension benefits from these plans would be covered under the increased $1,500 per month PBGF guarantee. This amendment is intended to apply to pension benefits provided to former Sears Canada employees.

Also, the government will introduce legislative amendments that would require a periodic review of the provisions governing the PBGF.

Financially distressed employers and pension plans

In order to improve the protection of pension plans and their beneficiaries, Ontario will be proposing a number of legislative amendments which will provide them with additional tools. The government intends to:

- Continue to take steps to transition to a new pension regulator, the Financial Services Regulatory Authority (FSRA). As part of the new structure, the government will establish an advisory committee within FSRA that would be dedicated to overseeing issues related to the PBGF and pension plans with distressed sponsors.
- Implement a disclosable events regime, similar to comparable regimes in the United Kingdom and the United States. Mandatory disclosure of certain corporate or plan events would increase transparency and alert the pension regulator to potential issues, such as significant asset stripping or the issuance of extraordinary dividends.
- Introduce a distressed pension plan workout scheme, giving the pension regulator the appropriate tools to respond to pension plans with a distressed sponsor.

The government will be consulting on the details of necessary regulatory amendments to support the proposed legislative measures.

OHIP+ expanding to include seniors

Starting in August 2019, OHIP+ will be extended to seniors (Ontario residents age 65 and over), eliminating the existing co-payments and deductibles under the Ontario Drug Benefits (ODB) program. Effectively, prescription medications would become completely free-of-charge, regardless of income, for those age 65 and older. This change may reduce costs for private retiree health care plans that currently cover these deductibles and co-payment charges.

New Ontario Drug and Dental Program

The government will introduce a new Ontario Drug and Dental Program for individuals and their families who do not have coverage from an extended health plan, starting in the summer of 2019. This program would reimburse participants for up to 80% of eligible prescription drug and dental expenses, up to an annual maximum of $400 for singles and $600 for couples, plus $50 for each child in the family. The program's impact is difficult to determine without more detail, and consultation will take place to determine the final design of the program, but the annual maximums are such that this plan would not nearly provide coverage equivalent to most private plans.

Expanding access to mental health and addiction services

A new investment of $2.1 billion over four years is proposed for a more integrated mental health and addictions system for all residents. This builds on the government's commitment in the 2017 budget to spend $6 million per year on efforts to support the development and/or expansion of mental health services on campus. The government intends to:

- Increase access to publicly funded psychotherapy;
- Improve community based services for youth and children;
- Provide mental health support in all high schools within two years, including professional development in mental health literacy to educators and school staff;
- Provide additional funding to implement a strategy to combat the opioid crisis;
- Expand supportive housing for mental health.

Limitations on the employer health tax exemption for small employers

Changes to the employer health tax (EHT) exemption are proposed that will result in over 20,000 Ontario employers paying $2,400 more EHT per year on average. Ontario would begin to follow the eligibility criteria for the small business deduction (SBD) for the EHT exemption. As a result, the EHT exemption would only be available to individuals, charities, not-for-profit organizations, private trusts and partnerships, and Canadian-controlled private corporations. Ontario would also incorporate federal anti-avoidance rules related to the multiplication of the SBD into the *Employer Health Tax Act*.

These changes would take effect on January 1, 2019. The government will seek public comments on the proposed anti-avoidance changes before introducing legislation.

Comment

The pension proposals would not directly affect most Ontario employers, although financially distressed employers may find themselves facing more regulatory scrutiny. Former Sears employees located in Ontario will welcome the proposed expansion of PBGF coverage in respect of the Sears bankruptcy. The Budget confirms that the government continues to work on the implementation of its new funding framework, which should be in place prior to the June election.

The expansion of drug and dental coverage for seniors and persons not covered by employer health plans is potentially far reaching, as would be the expansion of mental health coverage. The proposed restrictions on EHT exemptions will be of concern to many small businesses.

Ontario's provincial election will take place on June 7, 2018, so the implementation of many of these proposals will be subject to the decisions of the post-election government.

Ontario releases description of proposed variable benefit regulations

On March 20, 2018, the Ontario Ministry of Finance posted a description of proposed regulations concerning the payment of variable benefits from the defined contribution (DC) provision of an Ontario-registered pension plan. The Ontario *Pension Benefits Act* (PBA) includes provisions that, upon proclamation into force, will permit a pension plan with a DC component to offer variable benefits (VBs) to retired members through a VB account that will operate similarly to a life income fund (LIF). Until now, a DC member has had to transfer funds into a locked-in retirement account (LIRA), a LIF or purchase a life annuity in order to access retirement funds.

Establishment and operation of a Variable Benefit account

In order to establish a VB account, a member who has a spouse will be required to provide a spousal waiver of the joint and survivor pension within the 60 days prior to the establishment of the VB account. The waiver would be either a prescribed form or certified domestic contract.

The plan administrator must provide an initial statement containing prescribed information to the retired member within 30 days after establishing the VB account. The retired member is required to respond to the initial statement from the plan administrator and indicate the amount, frequency and method delivery of VB payments. The frequency and method of delivery of VB payments that the retired member first elects will remain the default for each subsequent year following, until a new election is made.

A minimum amount of annual income must be paid from a VB account each year, including in a year funds are transferred out. The minimum annual income is determined according to the *Income Tax Act* (ITA) rules for calculating the minimum income for registered retirement income funds.

The maximum annual income is the amount stipulated for LIFs under the PBA.

Transfers to and from the Variable Benefit account

The PBA permits transfers into a VB account from a DC pension plan and pooled registered pension plan. The regulation would also permit transfers from LIFs and LIRAs.

Transfers from the account would be permitted to a LIRA, a LIF or to purchase a life annuity.

Statement requirements

The proposal also summarizes the requirements for the various statements required from a DC pension plan that offers VB accounts.

Comment

Once the proposed regulations are adopted, the only remaining Canadian jurisdictions that will not permit a DC pension plan to offer VB accounts to members will be New Brunswick and Newfoundland and Labrador. Pension plans that choose to offer VBs will have additional administrative responsibilities, but will be able to offer their former members an additional retirement option that will not require them to move their funds to a financial institution or purchase a life annuity.

Public comments on the proposed regulations may be submitted by **May 4, 2018**.

Alberta announces temporary solvency funding relief

On March 23, 2018, Alberta announced temporary solvency funding relief for defined benefit (DB) pension plans. The Alberta Superintendent of Pensions will accept applications from DB pension plan administrators to extend the solvency deficiency amortization period from five years to 10 years. An administrator is also permitted to consolidate all existing pension plan solvency deficiencies into one new deficiency.

An application for relief may be made in respect of any actuarial valuation report that has a review date between December 31, 2016, and December 31, 2019, inclusive. The filing deadline for valuation reports as at December 31, 2016, has been extended to June 29, 2018. A plan that has already filed a valuation report with a December 31, 2016 valuation date may apply for funding relief by filing additional information with the Superintendent.

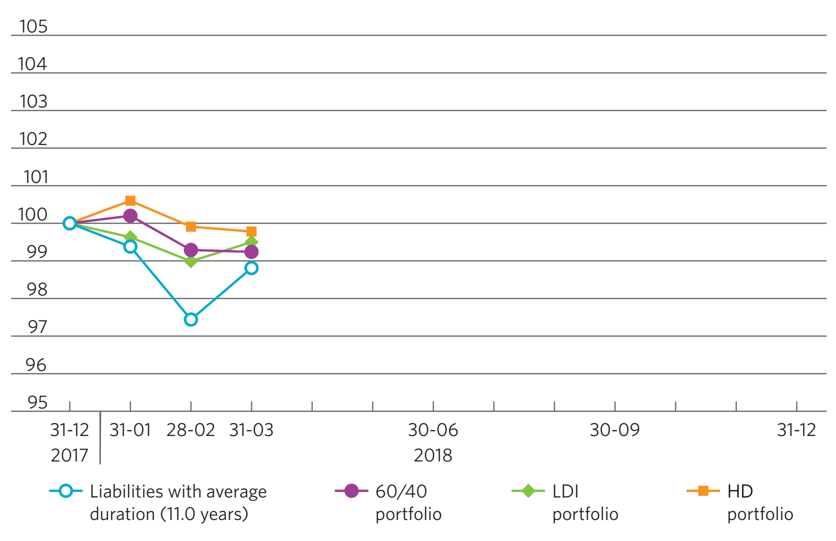
The application for relief must include confirmation that members will be advised that an extension on making solvency deficiency payments has been approved by the Superintendent. No benefit improvements that increase actuarial liabilities may be made unless approved in advance by the Superintendent.

Unless the Canada Revenue Agency would deem that the contributions already made to date would cause the plan's registration status to be revocable, all contributions already made by the plan sponsor must be retained in the plan fund. If the total amount already remitted to the pension plan exceeds what would have been required under the funding relief option, plan sponsors are permitted to cease making additional contributions until the excess contributions have been used up.

Tracking the funded status of pension plans as at March 31, 2018

This graph shows the changes in the financial position of a typical defined benefit plan with an average duration since December 31, 2017. For this illustration, assets and liabilities of the plan were each arbitrarily set at $100 million as at December 31, 2017. The estimate of the solvency liabilities reflects the new CIA guidance for valuations effective December 31, 2017 or later. The following graph shows the impact of three typical portfolios on plan assets and the effect of interest rate changes on solvency liabilities of medium duration.

The evolution of the financial situation of pension plans since December 31, 2017



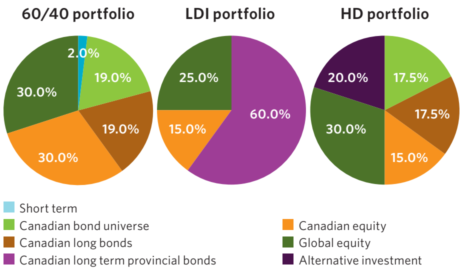
During the month of March, Canadian long-term bonds and Canadian long-term provincial bonds showed positive returns while the Canadian equity markets, alternative investments as well as global equity markets (CAD) showed negative returns. With a return of 0.5%, the low volatility portfolio (LDI[1]) outperformed the 60/40 portfolio (0.0%) and the highly diversified portfolio (HD) (-0.1%). The relative outperformance of the LDI portfolio is mainly due to a larger allocation in Canadian long-term provincial bonds. The prescribed CIA Annuity purchase rates and the commuted value rates used in the calculation of solvency liabilities decreased during the month. As a result, the solvency liabilities increased by 1.4% for a medium duration plan. For this type of plan, an investment in the 60/40, LDI portfolio or the HD portfolio resulted in a decrease of the solvency ratio.

Initial solvency ratio as at December 31, 2017	Evolution of the solvency ratio as at March 31, 2018 for three different portfolios		
	60/40 portfolio	Low volatility portfolio (LDI)	Highly diversified portfolio
100%	100.4%	100.7%	101.0%
90%	90.4%	90.6%	90.9%
80%	80.3%	80.6%	80.8%
70%	70.3%	70.5%	70.7%
60%	60.3%	60.4%	60.6%

[1] Liability driven investment

Comments

1. No consideration has been made for contributions paid to the plan or for benefits paid out of the plan.
2. Solvency liabilities are projected using the rates prescribed by the Canadian Institute of Actuaries (CIA) for the purpose of determining pension commuted values.
3. The underlying typical defined benefit plan is a final average plan with no pension indexing, including active and inactive participants representing 60% and 40% of liabilities, respectively.
4. Assets are shown at full market value. Returns on assets are based on three typical benchmark portfolios.



The table shows the impact of past returns on plan assets and the effect of interest rate changes on solvency liabilities of a medium duration plan, based on the plan's initial solvency ratio as at December 31, 2017, as well as the asset allocation of the three typical portfolios. Since the beginning of the year, driven by negative returns in Canadian equity markets, Canadian long-term bonds, Canadian long-term provincial bonds as well as the alternative investments, the 60/40 portfolio, the LDI portfolio and the HD portfolio returned -0.8%, -0.5% and -0.2% respectively. The solvency liabilities decreased over that same period by 1.2% for all type of duration of the group of retirees. The variation in the plan's solvency ratio as at March 31, 2018 stands between 0.3% and 1.0 %.

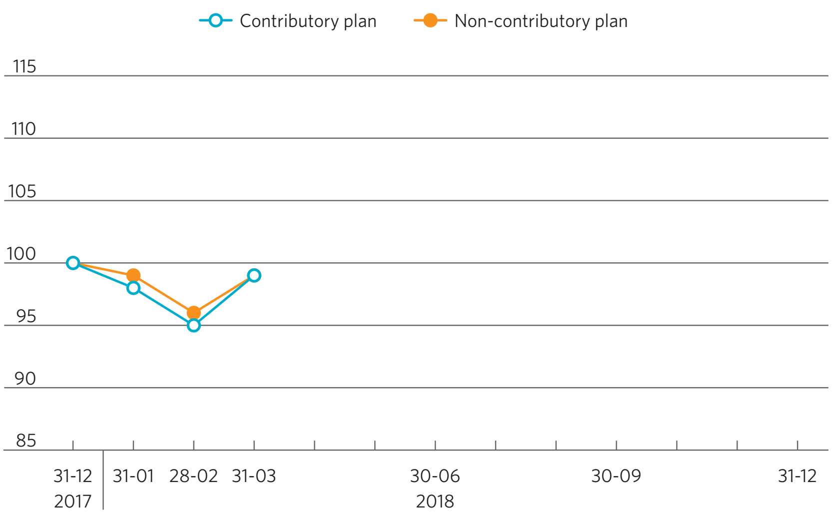
Please contact your Morneau Shepell consultant for a customized analysis of your pension plan.

Impact on pension expense under international accounting as at March 31, 2018

Every year, companies must establish an expense for their defined benefit pension plans.

The graph shows the expense impact for a typical pension plan that starts the year at an arbitrary value of 100 (expense index). The expense is influenced by changes in the discount rate based on high-quality corporate and provincial (adjusted) bonds and the median return of pension fund assets.

Expense Index from December 31, 2017



	31-12	31-01	28-02	31-03
Discount rate (%)	3.5	3.6	3,7	3.6
Return on assets (55% equities) (%)	0.0	0.1	-0.8	0.1

The table below shows the discount rates for varying durations and the change since the beginning of the year. A plan's duration generally varies between 10 (mature plan) and 20 (young plan).

Discount rate

Duration	December 2017	March 2018	Change in 2018
11	3.39%	3.45%	+6 bps
14	3.48%	3.54%	+6 bps
17	3.53%	3.60%	+7 bps
20	3.57%	3.63%	+6 bps

Since the beginning of the year, the pension expense decreased by 1% (for a contributory plan) due to an increase in discount rates.

Comments

1. The expense is established as at December 31, 2017, based on the average financial position of the pension plans used in our *2017 Survey of Economic Assumptions in Accounting for Pensions and Other Post-Retirement Benefits report* (i.e. a ratio of assets to obligation value of 93% as at December 31, 2016).

2. The return on assets corresponds to the return on the Morneau Shepell benchmark portfolio (55% equities and 45% fixed income), which reflects the average asset mix in our 2017 Survey.

3. The actuarial obligation is that of a final average earnings plan, without indexing (two scenarios: with and without employee contributions).

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