# Employment Benefits – 2023 Year in Review



## FEDERAL

### LAWS & ANNOUNCEMENTS

**Jan 13:** OSFI issued a new Guidance document on the maximum going concern discount rate for pension plans using an overlay strategy. **Punchline:** The agency says that, if appropriate, it will allow plans to first use the plan fund's target asset mix without regard to the overlay strategy for purposes of determining the maximum going concern discount rate.

**Mar 8:** Newly tabled Bill C-318 would create a new Employment Insurance (EI) special benefit of 15 weeks for adoptive parents and parents of children conceived via surrogate methods.

**Mar 27:** OSFI published the final version of the *Instruction Guide for Asset Transfers related to Defined Contribution Provisions of Pension Plans* and accompanying form, the Approval Request Form for Asset Transfers related to Defined Contribution Provisions of Pension Plans. It also issued a revised *Instruction Guide on Buy-in Annuity Products.*

**Jun 30:** OSFI issued a draft advisory on what technology federally regulated pension plan administrators should deploy to prevent cyber attacks and how to notify the government of any attacks or incidents that do occur.
**Action Point:** Find out the 12 things you should do to prevent data breaches at your workplace

**Nov 3:** The federal government called an emergency meeting with provincial and territorial finance ministers to discuss Alberta's planned withdrawal from the Canada Pension Plan and its potential impacts on other jurisdictions. Among other things, if the plans go through, Alberta will have to negotiate agreements with the CPP, QPP and social security protocols with international governments.

### CASES

**Drugs & Alcohol: Cannabis Odor Not Enough to Prove Employee Was Actually High**
Two facts were undisputedly true: 1. A cameraman backed up the company news van he was driving with the tailgate open; and 2. He reeked of marijuana when he pulled off the dangerous maneuver. The employer concluded that he must have been high and fired him. The cameraman denied the charge, contending that his jacket smelled of cannabis because he kept it in a part of his house where his nephew smoked pot. While dubious of the explanation, the federal arbitrator ruled that it **might have been** true and

that the employer didn't meet its burden of proving the cameraman was impaired.
**Result:** It knocked the penalty down to a 5-day suspension for unsafe driving [*Syndicat des communications de Radio-Canada v Société Radio-Canada,* 2022 CanLII 115408 (CA SA), November 24, 2022].
**Action Point:** Find out how to effectively control substance abuse at your workplace

## ALBERTA

### LAWS & ANNOUNCEMENTS

**Oct 1:** Alberta pension plan administrators take note: The Superintendent of Pensions increased the annual filing fee rate to $2.25 per member. The minimum fee is $250 and the maximum is $75,000. The rate applies to all annual information returns with fiscal year-ends from Oct. 1, 2023 to Sept. 30, 2024.

**Nov 22:** Alberta ended public consultations on whether to withdraw from the Canada Pension Plan and establish an Alberta Pension Plan for residents who don't receive retirement benefits through their employer. Meanwhile, legislation (Bill 2) to hold a referendum allowing Albertans to vote on the plan is working its way through the Assembly.

## BRITISH COLUMBIA

### LAWS & ANNOUNCEMENTS

**Jun 6:** BCFSA issued new a new Best Practices Guideline for sponsors, administrators and members of Multi-Employer Pension Plans that are registered in BC.

**Nov 8:** Royal Assent for Bill 33 which authorizes BC pension plans to offer what are called variable life benefits (VLBs) designed to keep employees with defined contribution plans from running out of money when they retire. Employees who opt for VLBs will receive lifetime pensions, with payments that go up and down based on federal tax rules.

## MANITOBA

### LAWS & ANNOUNCEMENTS

**Jan 3:** The Superintendent Pensions Division revised the guidance documents for Locked-In Retirement Accounts (LIRA), Life Income Funds (LIF) and LIF/LIRA withdrawals to incorporate the new 2023 YMPE of $26,640.

**May 11:** Manitoba officially signed onto the Canadian Association of Pension Supervisory Authority's 2020 Agreement designed to coordinate regulation of multi-jurisdictional pension plans across the country. The new coordinated rules will go into effect on July 1. BC, Alberta, Saskatchewan, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and the federal government have also signed the Agreement.

## NEW BRUNSWICK

### LAWS & ANNOUNCEMENTS

**May 1:** New regulations letting employees of small to mid-sized companies and the self-employed participate in pooled registered pension plans (PRPP) took effect. A PRPP is a defined contribution plan that provides retirement income to employees without access to pension plans via work. They're allowed under federal, BC, Nova Scotia, Manitoba, Ontario, Quebec and Saskatchewan pension laws.

**Nov 29:** Newly tabled Bill 17 would create a process enabling the transfer of 5 New Brunswick government pension plans that are at financial risk to existing shared-risk pension plans that are currently registered under Part 2 of the Pension Benefits Act in an effort to keep the threatened government plans afloat.

## NEWFOUNDLAND & LABRADOR

### LAWS & ANNOUNCEMENTS

**May 11:** Newfoundland officially signed onto the Canadian Association of Pension Supervisory Authority's 2020 Agreement coordinating regulation of multi-jurisdictional pension plans across the country. The new coordinated rules will go into effect on July 1. Prince Edward Island is now the only province that hasn't joined the CAPSA agreement.

## NUNAVUT

### LAWS & ANNOUNCEMENTS

**Mar 13:** Newly passed Bill 14 amends the Northern Employee Benefits Services Pension Plan Act to provide for more flexibility in assembling the NEBS Pension Committee and adopting regulations.

## ONTARIO

### LAWS & ANNOUNCEMENTS

**Jan 1:** Reminder: Pension plans must now use the FSRA Pension Services Portal (PSP) applications to file applications for filing extensions, amendments, Wind Up, wind up interim payment, contact change requests, letters of credit, annuity discharge, refunds and other applications.

**Feb 14:** Most pension plans in Ontario remained fully funded on a solvency basis at the end of 2022, despite the downturns in the macro economy. According to the FSRA report, the median solvency ratio actually hit an all-time high of 112%. Pension fund investment returns during the fourth quarter were 2.9%.

**May 11:** Despite tough financial times, Ontario pension plans are gaining strength, according to FSRA's newly released Q1 2023 Solvency Report. During the quarter, the median solvency ratio reached an all-time high of 115%, thanks to a robust 4.3% average return on investment. The percentage of fully funded pension plans jumped 5% to 86%; only 2% of plans had a solvency ratio below 85%, the same as the previous quarter.

**Aug 15:** From now through Sept. 28, FSRA will be holding public consultations on revised guidance on pension plan administrator roles and responsibilities. Key issues on the table include records management, responding to complaints and timely and accurate communication of information to plan members.

**Aug 17:** FSRA reports that DB pension plans in Ontario remained financially strong during the second quarter of 2023, with the median solvency ratio reaching an all-time high of 116%. The number of plans reporting themselves to be fully funded during 2022 increased to 83%, as compared to 76% in 2021.

**Oct 17:** That's the deadline to comment on a Ministry of Finance proposal to implement regulatory changes that would allow for implementation of permanent target pension plans in Ontario.

**Nov 14:** FSRA opened public consultations on revised Guidance designed to clarify the requirements for making amendments to existing pension plans that take effect retroactively. Deadline to comment: January 19, 2024.

**Nov 22:** Despite challenging economic times, the median solvency of defined benefit pension plans reached an all-time high of 117% during the third quarter of 2023. FSRA also reported that 85% of plans were fully funded on a solvency basis. The bad news is that average investment returns during the quarter were -4.5%.

## QUÉBEC

### LAWS & ANNOUNCEMENTS

**Feb 17:** The province will wrap up its regular 6-year public consultations on the Québec Pension Plan and what, if any, steps should be taken to preserve its future sustainability and financial health.

**Feb 23:** The rate of investment return for the QPP base plan was -3.9% in 2022; the QPP supplementary plan had an even lower return of -5.7%. However, Retraite Québec added that the QPP is "in good financial health," with the base plan posting average returns of 6.7% over 5 years and 9.1% over 10 years.

**Mar 21:** The new provincial budget includes changes to the QPP to allow older employees to retire gradually. Among other things, workers age 65 and older or who are receiving a retirement pension would have the option to discontinue their QPP contributions.

**Sep 15:** Retraite Québec began refunding contribution overpayments made by members of public sector pension plans following regularization of employment in 2022. Regularization of employment is an adjustment of service for plan members holding more than one employment position in a given year to ensure compliance with plan eligibility rules.

**Nov 23:** Newly tabled Private Member Bill 690 would rectify an inequity toward disabled retirees in the QPP Act by eliminating the mandatory reduction of retirement pensions of persons who receive a disability pension between ages 60 and 65 thereby allowing disabled retirees to receive the standard monthly retirement pension amount.

### CASES

**Drugs & Alcohol: Employer Not Obligated to Cover Medical Marijuana in Prescription Drug Plan**
A part-time professor filed a grievance against the university after learning that his employer-provided prescription drug coverage plan didn't cover the medical marijuana he needed to treat his sleep disorder. The university contended that the collective agreement required it to provide a plan covering "prescription drugs," defined as those that have a Health Canada Drug Identification Number (DIN). And since medical cannabis doesn't have a DIN, the university had no obligation to cover it. The Québec arbitrator agreed and tossed the grievance [*Association of Part-Time Professors of Concordia University v Concordia University*, 2022 CanLII 116822 (QC SAT), December 8, 2022].
**Action Point:** Find out how to effectively control substance abuse at your workplace

## SASKATCHEWAN

### LAWS & ANNOUNCEMENTS

**Feb 17:** New regulations remove the maximum limits on funds that may be transferred

from other pension plans and retirement savings plans to the Saskatchewan Pension Plan, starting with the 2023 plan year.

**Mar 14:** Second Reading for Bill 108 amending the *Pension Benefits Act* to let employers establish solvency reserve accounts and use letters of credit instead of solvency deficiency contributions to fund DB plan operating deficits. It would also eliminate liability of plan administrators that enter into annuity buyout contracts with insurance companies under certain conditions.

**Apr 11:** Newly published Advisory 23-019 notifies stakeholders that BCFSA has updated and clarified its guidelines on the filing of valuation reports by pension plans with defined benefit provisions.

**Apr 24**: BCFSA published a new Advisory notifying pension plan administrators and other stakeholders that the Superintendent has changed its policy on calculating commuted value for individuals who are employed in BC but who participate in a multi-jurisdictional pension plan registered outside of the province.

**May 17:** Newly passed Bill 108 amends the Pension Benefits Act to let employers establish solvency reserve accounts and use letters of credit instead of solvency deficiency contributions to fund DB plan operating deficits up to a maximum amount. It also eliminates liability of plan administrators that enter into annuity buyout contracts with insurance companies under certain conditions.

**May 29:** From now through July 15, the Financial and Consumer Affairs Authority will hold public consultations on a proposal to exempt certain types of pension plans from Pension Benefits Act registration and regulatory requirements.

**Jul 15:** The Financial and Consumer Affairs Authority completed public consultations on a proposal to exempt certain types of pension plans from Pension Benefits Act registration and regulatory requirements.