

The ORPP – Are You Ready?



As has been widely reported by the Canadian media, the Ontario government intends to introduce the Ontario Retirement Pension Plan (the “ORPP”) as a supplement to the Canada Pension Plan (“CPP”).

On June 2, 2016, the Ontario government passed the *Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016* (the “Bill” or the “Act”) and confirmed its commitment to the ORPP. Supporting regulations are expected to be introduced this summer. In this article, I highlight the key features of the ORPP.

What is the ORPP?

The ORPP is a mandatory provincial pension plan. It will be phased in between January 1, 2018 and January 1, 2020. According to the Ontario government, the ORPP is being designed to integrate with any future CPP expansion and may not be implemented if CPP is enhanced. CPP enhancement will be discussed at the Federal-Provincial-Territorial Finance Ministers meeting on June 20-21, 2016. If agreement to enhance the CPP to the satisfaction of the Ontario government cannot be reached in the coming months, the ORPP will be implemented, effective January 1, 2018.

The main features of the ORPP are as follows:

• Application of the ORPP

The ORPP will apply in respect of “employment in Ontario.” An employee will be considered to be employed in Ontario if: (a) the employee is required to report to work at an employer’s establishment that is located in Ontario; or (b) if the employee is not required to report to work at an employer’s establishment, but the employee is paid from an Ontario based establishment.

Due to the current federal income tax and pension rules, employees in federally regulated industries (e.g., banks, telecommunications, railways and air transportation) cannot participate in the ORPP. However, the Ontario government has indicated that it is in discussions with the federal government to include federally regulated employees as well as the self-employed in the ORPP.

Employees under age 18 and over the age of 70 will not be permitted to contribute to the ORPP. Employees who are receiving a pension under the ORPP will also not be permitted to contribute.

• Comparable Workplace Pension Plan

In introducing the ORPP, it is the goal of the Ontario government that by 2020, every employee in Ontario will be part of either the ORPP or a “comparable” workplace pension plan. Ontario employees who participate in a “comparable” workplace pension plan will not be required to contribute to the ORPP; all other Ontario employees will be required to contribute to the ORPP, unless otherwise exempt.

The Ontario government has defined a “comparable” workplace pension plan as: (i) a defined benefit registered pension plan that matches or exceeds the benefit being provided through the ORPP (for an earnings based defined benefit plan, the annual benefit accrual rate must be at least 0.5% to be considered comparable); (ii) a defined contribution registered pension plan with a minimum total contribution of 8% of base salary earnings, at least 4% of which must be employer contributions; and (iii) certain pooled registered pension plans, once such plans are established in Ontario. An employee’s voluntary contributions and an employer’s matching contributions to a defined contribution plan will not be taken into account in determining whether or not the plan is comparable.

Other retirement savings plans commonly offered by employers, such as RCAs, Group RRSPs or DPSPs, will not be considered comparable workplace pension plans. In other words, if an employee only participates in an RCA, Group RRSP or DPSP, that employee will be required to contribute to the ORPP and the employer will be required to contribute to the ORPP on behalf of the employee.

The question of whether or not a plan is “comparable” will be assessed at the “level of a subset of employees.” As a result, if a plan provides different benefits to different groups of employees, the question of whether or not the benefits are comparable will be assessed against each group of employees. A plan may, therefore, have both comparable and non-comparable elements at the same time. A similar issue arises in respect of waiting periods for membership in a comparable plan (i.e., a pension plan that requires employees to complete a minimum period of service before joining the plan). Employers who sponsor comparable plans with waiting periods for membership will be required to contribute to the ORPP during the waiting periods, as will the employees subject to these waiting periods.

• ***Contribution Requirements***

Participating employees and employers will be required to contribute an equal amount to the ORPP. The required contribution rate for both employees and employers will be 1.9% of an employee’s annual earnings up to \$90,000. Contributions will not be required on earnings below \$3,500.

Contributions and enrolment under the ORPP will be phased in between January 1, 2018 and January 1, 2020. An employer’s enrolment date will be determined by the size of the employer’s workforce and whether the employer had a registered workplace pension plan in place (or had begun the process of registering such a plan) as of August 11, 2015.

In **Wave 1**, which begins on January 1, 2018, large employers (defined as employers with 500 or more employees) without a registered workplace pension plan in place will be required to enrol in and contribute to the ORPP. Initial required contributions for these employers and their employees will be 1.6% (0.8% each) of earnings and will increase to 3.2% (1.6% each) on January 1, 2019 and 3.8% (1.9% each) on January 1, 2020.

Wave 2 employers (defined as employers with 50-499 employees) without a registered workplace pension plan in place will also be required to enrol in and contribute to the ORPP as of January 1, 2018. Initial required contributions for these employers

and their employees will be 1.6% (0.8% each) and will increase to 3.2% (1.6% each) as of January 1, 2019 and 3.8% (1.9% each) as of January 1, 2020.

In **Wave 3**, small employers (defined as employers with 49 or fewer employees) without a registered workplace pension plan in place will be required to enrol in and contribute to the ORPP. Small employers and their employees will be subject to a similar phase in of contributions with a 1.6% (0.8% each) required contribution as of January 1, 2019, increasing to 3.2% (1.6% each) as of January 1, 2020 and 3.8% (1.9% each) as of January 1, 2021.

In **Wave 4**, the last group of employers will be required to enrol in and contribute to the ORPP: employers with registered pension plans that either do not meet the comparability test or do not cover all classes of employees. The required contributions for these employers, regardless of their size, will be 3.8% (1.9% each) of an employee's earnings as of January 1, 2020.

What should employers do now?

In anticipation of the roll-out of the ORPP, employers should review existing retirement savings arrangements sooner rather than later. Will an employer's plan be considered a "comparable" workplace pension plan or will the employer and its employees be required to contribute to the ORPP? How will the ORPP impact the employer's employees and its employee compensation strategy? What about employees in other provinces? Is equity between employees a concern?

If an employer's plan is not a "comparable" workplace pension plan or has elements that are not "comparable" (i.e., a waiting period for eligibility), employers would be well advised to take the time now to consider the impact of the ORPP on their overall compensation and benefits package and whether and, if so, what, changes should be made. Employers in unionized sectors should also consider discussing the ORPP in bargaining in order to ensure that the ORPP is considered and properly addressed in any collective agreement.

 **Article by:** Kim Ozubko is a partner at Miller Thomson LLP (e-mail: kozubko@millerthomson.com / phone: [416.597.4338](tel:416.597.4338)). Ms. Ozubko's practice focuses exclusively on pensions and employee benefits law. This includes advising clients on the development of pension and other employee benefit plans as well as on plan mergers and conversions, pension fund investments, fiduciary duties and ongoing regulatory compliance. Ms. Ozubko is a frequent speaker and author in the areas of pensions and employee benefits law.