



SECTION: Access to Information

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PBA, 1990, s. 25 - 30, 42, O. Reg. 909 s. 28, 39 - 46

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Note: Due to legislative changes, the references to the "Superintendent of Pensions" should now read the "Superintendent of Financial Services," and the references to "PCO" should now read "FSCO."

Staying Informed: A Member's Right to Information

There are several categories of information that must be disclosed to pension plan members:

- I Information Members Must Receive from the Administrator
- II Information Members May Request from the Administrator
- III Information Members May Receive from the Administrator in Certain Circumstances

I Information Members Must Receive from the Administrator

Under Ontario's *Pension Benefits Act* (the "PBA"), administrators are required to provide certain information to plan members about their pension benefits and entitlements from the pension plan.

In addition to those sections of the Regulation identified in this material, please refer to sections 25 to 30 inclusive of the PBA.

Member Booklets

A member or eligible member of a plan is entitled to receive an employee or member booklet from the administrator. The booklet must explain the provisions of the pension plan and the rights and obligations of plan members.

The booklet must be provided to the members within 60 days after the effective date of the establishment of the plan. If a pension plan has a membership eligibility period, the administrator must provide the prospective member with the booklet 60 days before the individual is eligible to become a member. If, however, new employees become pension plan members the day they commence employment, the administrator must provide the booklet for new employees within 60 days of their respective dates of hiring.

Annual Statements

The annual statement must contain the information required by the PBA. The statement may also summarize specific plan details that are in addition to the requirements of the PBA.

The statement advises the member each year of the value of the pension benefit that has accrued in a defined benefit plan or, in the case of a defined contribution plan, the total contributions (plus earned interest) made on the member's behalf. Members must receive the annual statement within 6 months following the year end of the plan.

Section 40 of the Regulation describes the information that must be included in all annual statements regardless of whether the plan is a defined benefit or a defined contribution type:

- * the legal name of the pension plan and its provincial registration number;
- * the member's name and birth date;
- * the statement reporting period;
- * the date membership in the plan commenced;
- * the period of employment (unless membership is in a MEPP);
- * the date or dates benefits or contributions are vested;
- * the normal retirement date under the plan;
- * the earliest date an actuarially unreduced pension would be payable;
- * marital status and name of the spouse;
- * identity of the member's beneficiary for statutory pre-retirement death benefits;
- * benefits, other than those benefits required to be paid under the PBA, provided to the beneficiary on the member's death;
- * required member contributions during the reporting period;
- * the total required member contributions plus earned interest since joining the plan;
- * any additional voluntary contributions made by the member during the reporting period;
- * the total additional voluntary contributions, plus earned interest, made by the member since joining the plan; and
- * any amendments to the plan affecting the member, where the member was not previously informed.

The annual statement must contain the following additional information for members of *defined contribution plans*:

- * the amount of employer contributions made to the plan on the member's behalf during the reporting period; and
- * the amount of employer contributions, plus earned interest, made to the plan on the member's behalf since membership commenced.

The annual statement must disclose the following additional information to members of *defined benefit plans*:

- * the number of years of employment (for pension purposes to the end of the statement period);
- * the amount of annual pension payable at the normal retirement date determined to the end of the reporting period;
- * whether there will be any reduction based on a Canada Pension Plan/Old Age Security offset;
- * if applicable, the member's salary level used to determine the pension benefit;
- * if applicable, any special payments being paid by the sponsor to liquidate a going concern unfunded liability or solvency deficiency; and
- * details respecting surplus and entitlement to surplus in the continuing plan and on wind up.

The annual statement must contain further information for members of a *multi-employer pension plan providing defined benefits* (where the maximum amount of employer contributions is limited by a collective agreement):

- * a statement that member benefits are not covered by the Pension Benefits Guarantee Fund; and
- * a statement that if the plan is in a deficit position at wind up, pension benefits may be reduced.

Termination Statements

When a member terminates employment, retires or dies while employed, a personalized termination statement must be issued by the administrator no later than 30 days after the administrator is advised of the termination. Depending on the circumstances related to termination, the individual statement must include specified information.

A 1) The Member Terminates For Reasons Other Than Retirement (Section 41 of Regulation 909)

At termination of employment, if the member has vested in accordance with the plan provisions or has satisfied the age and service requirements for vesting under pension legislation, the member is entitled to a deferred pension and *may be* entitled to an immediate pension.

The member must receive from the administrator a written termination statement within 30 days of notice of termination being given. The termination statement summarizes much of the same information found in the annual statement including, if applicable, the name of the member's spouse.

In addition, the following information must be provided:

- * all benefits to which the member is entitled on termination and the early, normal or postponed retirement options applicable to those benefits;
- * the amount of any bridging benefit the member is entitled to and the date on which the benefit ceases to be paid;
- * any plan provisions which provide for inflation protection;
- * the transfer value of the deferred pension and ancillary benefits;
- * where the plan is not fully funded, that portion of the transfer value that may be transferred initially;
- * portability options under section 42 of the PBA**;
- * the time period for selecting portability options; and
- * the amount of any cash refund and the effect of the refund, if any, on the member's pension or deferred pension.

2) The Member is Entitled to a Contribution Refund on Termination (Subsections 42(2), (3) and (4) of the PBA)

If a member terminates employment for reasons other than retirement or death and prior to becoming eligible for a vested benefit, the administrator must provide a termination statement indicating the amount of contribution refund available. The statement will also describe any refund options which the member might choose, i.e. cash refund or transfer to a regular RRSP.

** for terminated members who are entitled to an immediate pension, portability options will be consistent with the terms of the pension plan.

The termination statement indicating the amount of contribution refund must be provided to the former member within 30 days following notification of the termination. Where no options are available with respect to the refund, monies must be made available within 60 days after termination of employment. If the former member selects an option with respect to the refund, the administrator must comply with the election within 60 days after receipt of a direction from the member.

The refund termination statement described in section 42 of Regulation 909 includes:

- * the legal name of the pension plan and its provincial registration number;
- * the member's name and birth date;
- * the years of employment used to determine the pension benefit;
- * the amount of any refund;
- * any ancillary benefit to which the member may be entitled to; and
- * any transfer option to which the member is entitled, and the time period in which the option must be chosen.

B The Member Dies Before Retirement

If the member or former member dies before payment of a pension commences, the administrator must issue a statement called a Death/Survivor Benefit Statement to the spouse, beneficiary or legal representative within 30 days after notification of death.

The death/survivor statement described in section 43 of Regulation 909 includes:

- * the legal name of the pension plan and its provincial registration number;
- * the amount and method of payment of the benefit;
- * the basis for indexation of the pension, if applicable;
- * in a defined benefit plan - the statement may show a refund amount, if applicable, payable to the member for contributions plus interest made after January 1, 1987 that exceed one-half of the commuted value of the pension;
- * where it is a condition of the plan, the amount of pension resulting from additional voluntary contributions;
- * where the death benefit is payable to a spouse, a choice of a lump sum payment or an immediate pension (both would be equal to the commuted value of the deferred pension); and
- * the time period within which options may be exercised**.

C The Member Retires

At least sixty days prior to a member's normal retirement date or the date on which the member elects to retire, the administrator must issue a Retirement Termination Statement. If the member does not give adequate notice of retirement, the administrator may issue the Retirement Termination Statement within 30 days after the date on which the member has given notice.

** A spouse or beneficiary has up to 90 days to make an election. Upon receipt of the election form, the administrator must respond within 60 days.

The retirement termination statement described in section 44 of Regulation 909 includes:

- * the legal name of the pension plan and its provincial registration number;
- * the member's name and birth date;
- * the membership date and the years of service used to calculate the pension;
- * marital status and the identity of the spouse;
- * the date of payment of pension benefits;
- * the amount of the monthly pension;
- * any reduction or increase in the pension as a result of early or postponed retirement;
- * the amount of pension purchased with additional voluntary contributions;
- * the amount of pension purchased with contributions transferred from another plan;
- * the effect of any integration with government pensions;
- * any bridging benefits and the date they will cease;
- * any indexation provisions;

- * any benefit payable in the event of the member's death and the identity of the beneficiary; and
- * any other refunds to which the member may be entitled.

II Information Members May Request from the Administrator

Members of pension plans are entitled to inspect or copy once annually all documents that support and relate to the plan and its operation. All documents that set out the sponsor's responsibilities and the member rights and obligations are to be made available to members at the location where the member is employed. The member should make a written request to the administrator to review or obtain a copy of the documents. The administrator is entitled to charge a reasonable amount for any copies that are provided. Efforts should be made by the administrator and member to accommodate each other reasonably if, for example, the two are at different locations. If the administrator does not respond to the member's written request within 30 days following receipt of the request, the member should follow-up with the PCO.

Documents that members may review or copy are described in section 45 of Regulation 909 include:

- * pension plan documents/texts and all amendments;
- * previous versions of plan documents/texts and amendments;
- * documents that set out the employer's or previous employer's responsibilities for the pension plan;
- * documents appointing a plan or fund administrator;
- * copies of all documents required to be filed with the PCO: (e.g. Annual Information Returns ("AIRs"), unaudited or audited financial statements, investment policy returns, Statements of Investment Policies and Goals, actuarial valuations, cost certificates);
- * copies of all correspondence between the administrator and PCO staff except for correspondence respecting individual plan members; and
- * copies of agreements respecting the purchase or sale of a business or other assets of a business that relate to the pension plan.

III Information Members May Receive from an Administrator in Certain Circumstances

Notices from the Administrator

A Notice of Adverse Plan Amendment (Section 26 of the PBA)

From time to time, the employer/plan sponsor may make amendments to the pension plan. If these amendments result in a reduction of the member's future benefits or affect the rights or obligations of members, including former members or other people who are entitled to money from the pension fund, the administrator is required to give a written notice with an explanation of any such amendment to all those potentially affected by it. The notice will invite recipients to submit comments concerning the effect of the proposed amendment to the administrator and the Superintendent of Pensions within 45 days of receipt of the notice. The Superintendent of Pensions will not register the amendment until after the 45 days has expired.

B Notice of Registration of Amendment (Section 39 of Regulation 909)

After the an adverse plan amendment has been registered by the PCO, the administrator must give written notice of registration to all plan beneficiaries affected by the amendment. The notice must be issued within 60 days of registration.

C Notice of Full and Partial Plan Wind Up (Subsection 28(1) of Regulation 909)

The administrator must give written notice of the employer's intention to wind up the plan, in full or in part, to the Superintendent of Pensions, all members, former members, each trade union, the advisory committee, if applicable and anyone else entitled to payment from the pension fund. The proposed date of

full or partial wind up must be identified in the Notice.

If only a portion of the plan is winding up, it is called a partial plan wind up and only those members and individuals affected by it must receive a notice from the administrator.

According to the Regulation, the wind-up notice must include:

- * name of the plan and the plan provincial registration number;
- * proposed date of wind up;
- * notification that all members and all others entitled to a benefit or payment from the fund will receive individual statements setting out plan entitlements and options; and
- * notification that members may continue to make contributions to a contributory plan for the period of notice of termination of employment.

D Notice of Entitlements

Each member who is entitled to a pension, deferred pension, or a refund will receive an individual statement setting out plan entitlements and options. This notice must specify the time period available to the former member to select an option, being not less than 90 days. If the former member does not select an option within that time period, the administrator may choose to provide either an immediate or deferred pension. The administrator must comply with the former member's selection within 30 days after receipt of the completed option form or, on receipt of notice that the wind-up report has been approved by the Superintendent, whichever is the later.

According to subsection 28(2), (3) and (4) of Regulation 909, the notice of entitlements on plan wind up includes:

- * the legal name of the plan and its provincial registration number;
- * the member's name and birth date;
- * the date of plan wind up;
- * the date the member began employment, and the date the member joined the plan;
- * the name of the member's spouse;
- * the total amount of contributions made by the member since the date of the last annual statement;
- * the total amount of contributions made by the member for the period of plan membership, plus earned interest, to the date of plan wind up;
- * the amount of additional voluntary contributions made by the member since the date of the last annual statement;
- * the total amount of additional voluntary contributions made by the member for the period of plan membership, plus earned interest, to the date of plan wind up;
- * any amount transferred from another pension plan since the date of the last annual statement, and the pension benefit attributable to that amount;
- * the rate of interest credited to the member's contributions since the date of the last annual statement;
- * an explanation of any amendments made to the plan which have not already been explained by a Notice of Amendment;
- * the time period in which any transfer option must be selected;
- * a description of any reductions made to the member's benefits as a result of the plan having insufficient assets to pay all benefits;
- * the method of distribution and, if applicable, the formula for allocation of surplus to plan beneficiaries;
- * notification of where the wind-up report can be reviewed and how a copy may be obtained; and
- * the name of the individual who may be contacted should the former member have questions about their Notice of Entitlement.

In the case of a *defined contribution plan*, the notice of entitlements also includes:

- * the total amount of employer contributions made to the plan since the date of the last annual statement; and
- * the total amount of employer contributions made to the plan, plus earned interest, to the date of plan wind up.

In the case of a *defined benefit plan*, the notice of entitlements also includes:

- * the member's years of employment used to calculate benefits, including any periods credited because of enhanced wind up benefits; and
- * the salary level used to determine benefits, if salary is a determining factor.

E Notice of Surplus Withdrawal Application in Ongoing Plans and in a Wind up

If the employer is considering a withdrawal of surplus from either a plan that is continuing or a plan that is winding up, all members potentially affected by the withdrawal must receive notice that the application has been filed with the PCO. It may be appropriate for the member or group of members to seek legal advice as to surplus entitlement. (Note that after notice of the employer's intentions to wind up the plan has been given, no money may be paid out of the pension fund without the prior consent of the Superintendent.)

The notice may include a section asking members to agree, in writing, to allow the plan sponsor to withdraw surplus from the plan. The notice must contain a statement that members may write to the PCO to express their views on the application.

In an application for surplus withdrawal from an on-going plan, the employer/plan sponsor must obtain the consent of *all* members to the terms upon which surplus is to be paid out of the plan. If surplus is allocated to a person to increase benefits, the individual must be offered the choice of receiving the surplus in the form of inflation adjustments to the existing benefits (Section 10 of Regulation 909).

In a wind-up situation, the plan sponsor must obtain the consent of two-thirds of the members to the terms for surplus allocation.

According to subsection 28(5) of Regulation 909, the notice of surplus withdrawal from ongoing or wound up plans includes:

- * the legal name of the plan and its provincial registration number;
- * review date of the actuarial report;
- * amount of surplus attributable to employer and employee contributions;
- * amount of surplus withdrawal requested;
- * a statement that members' comments may be made to the PCO within 30 days of receipt of the notice;
- * applicable provisions of the plan text that references surplus reversion to the employer; and
- * a statement that the wind-up report may be viewed or copied at the sponsor's office.

F Notice to A Spouse (or Former Spouse) on Marriage Breakdown (Section 46 of Regulation 909)

An administrator who is given a copy of a domestic contract or court order must provide notice to the spouse of the member's termination of employment. The administrator must also provide a copy of the member's termination statement and must advise the spouse of options, if any, available for transferring his/her share of the member's pension.

The notification must be made within 30 days after the administrator receives notice of the member's termination.