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c 2 Pension Benefits Amendment Act, 1983

Ontario

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CHAPTER 2

An Act to amend the Pension Benefits Act

Assented to January 27th, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, is amended by relettering clause (a) as clause (aa) and by adding thereto the following clauses: s. 1 (1),
amended

(a) "assets", when used in relation to an employer, means assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer;

(ab) "current service cost" means the amount of money that the employer of employees, who are members of a pension plan, is required by the plan, this Act and the regulations to pay into the plan in a fiscal year of the plan to cover the cost of benefits accrued during the fiscal year.

2. Subsection 21 (2) of the said Act is repealed and the following substituted therefor: s. 21 (2),
re-enacted

(2) Upon the termination or winding up of a registered pension plan, the employer of employees covered by the pension plan shall pay to the administrator, insurer or trustee of the pension plan, Termination
or
winding up

(a) an amount equal to,

(i) the current service cost, and

(ii) the special payments prescribed by the regulations.

that have accrued to and including the date of the termination or winding up but, under the terms of the pension plan or the regulations, are not due on that date; and

- (b) all other payments that, by the terms of the pension plan or the regulations, are due from the employer to the pension plan but have not been paid at the date of the termination or winding up.

Accrual

(2a) For the purposes of clause (2) (a), the current service cost and special payments shall be deemed to accrue on a daily basis.

s. 23,
re-enacted

3. Section 23 of the said Act is repealed and the following substituted therefor:

Trust money
for employee

23.—(1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension plan as the employee's contribution to the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension plan.

Money
deemed
to be
received

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee shall be deemed to be money received by the employer from the employee.

Employee's
lien

(3) The administrator or trustee of the pension plan has a lien and charge upon the assets of the employer in an amount equal to the amount that is deemed to be held in trust under subsection (1).

Trust money
for plan
members

(4) An employer who is required by a pension plan to contribute to the pension plan shall be deemed to hold in trust for the members of the pension plan an amount of money equal to the total of,

- (a) all moneys that the employer is required to pay into the pension plan to meet,
 - (i) the current service cost, and
 - (ii) the special payments prescribed by the regulations,

that are due under the pension plan or the regulations and have not been paid into the pension plan; and

- (b) where the pension plan is terminated or wound up, any other money that the employer is liable to pay under clause 21 (2) (a).

(5) The administrator or trustee of the pension plan has a lien and charge upon the assets of the employer in an amount equal to the amount that is deemed to be held in trust under subsection (4). Members' lien

(6) Subsections (1) and (4) apply whether or not the moneys mentioned in those subsections are kept separate and apart from other money. Application of subss. (1, 4)

4.—(1) Clauses 26 (1) (d) and (e) of the said Act are repealed and the following substituted therefor: s. 26 (1) (d, e), re-enacted

(d) subject to the regulations, to transfer his pension benefit credit to a pension plan of his new employer if the transfer is accepted by the pension plan of his new employer; or

(e) subject to the regulations, to transfer his pension benefit credit to a registered retirement savings plan as defined in the *Income Tax Act* (Canada). R.S.C. 1952, c. 148

(2) Subsection 26 (4) of the said Act is repealed and the following substituted therefor: s. 26 (4), re-enacted

(4) The administrator of the pension plan that is wound up, in whole or in part, shall give notice to each employee to whom subsection (1) applies that the employee has the right to make an election under subsection (1). Notice of right to elect

(4a) Where there is no administrator of the pension plan, the employer of an employee to whom subsection (1) applies shall give to the employee the notice mentioned in subsection (4). Where no administrator

(4b) An employee to whom subsection (1) applies who does not make an election within three months after having been given the notice mentioned in subsection (4) shall be deemed to have elected. Employee deemed to elect

(a) under clause (1) (a) to receive an immediate pension benefit; or

(b) if the employee is not eligible under the pension plan to receive an immediate pension benefit, under clause (1) (b) to receive a pension benefit commenc-

ing at whichever age mentioned in the clause comes first.

Deemed
election
final

(4c) An employee who, under subsection (4b), is deemed to have made an election does not have and shall not be deemed to have the right to make any other election under subsection (1).

s. 26 (6),
re-enacted

(3) Subsection 26 (6) of the said Act is repealed and the following substituted therefor:

Notice
period

(6) For the purposes of determining eligibility for and the amount of a pension benefit referred to in subsection (1), the period of time that an employee has been in the service of his employer or has been a member of the pension plan, as the case may be, includes the period of the notice required under Part XII of the *Employment Standards Act* to terminate the employment of the employee.

R.S.O. 1980,
c. 137

Application
of
subs. (6)

(7) Subsection (6) does not apply for the purpose of calculating the amount of a pension benefit of an employee who is required by the pension plan to make contributions to the pension plan and has not done so for the period of the notice required to terminate the employment of the employee under Part XII of the *Employment Standards Act*.

s. 27 (2),
re-enacted

5.—(1) Subsection 27 (2) of the said Act is repealed and the following substituted therefor:

Application
of
subs. (1)

(2) Notwithstanding subsection (1), where a person is receiving payment under a pension plan to satisfy the payment of pension benefits to which the person is entitled, the payment is subject to execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario.

Notice of
enforcement

(3) Subsection (2) applies only where the person receiving payment is given ten days notice, or such greater notice as is otherwise required by law in Ontario, as to the enforcement of the order.

Application
of
s. 27 (2)

(2) Subsection 27 (2) of the said Act, as re-enacted by subsection (1) of this section, applies to orders for support or maintenance enforceable in Ontario whether made before or after this section comes into force.

s. 30 (2),
amended

6. Subsection 30 (2) of the said Act is amended by inserting after “in” in the fourth line “this Act and”.

s. 31 (1) (d),
re-enacted

7. Clause 31 (1) (d) of the said Act is repealed and the following substituted therefor:

- (d) the value of the contributions an employee was required to make and has made to the defined benefit pension plan in respect of service in Ontario, to the extent that the value of the contributions exceeds the value of the pension benefit credit of the employee, including the value of the pension benefit of the employee guaranteed under clause (a) or (c), plus the value of any voluntary additional contributions made by the employee to the defined benefit pension plan while the employee was employed in Ontario.

8. Sections 32 and 33 of the said Act are repealed and the following substituted therefor: ss. 32, 33, re-enacted

32.—(1) The employer of employees who are members of a defined benefit pension plan that the employer is bound by or to which the employer is a party and that is partly or wholly wound up shall pay to the administrator, insurer or trustee of the plan an amount of money equal to the amount by which the value of the pension benefits guaranteed by section 31 plus the value of the pension benefits vested under the defined benefit pension plan exceeds the value of the assets of the plan allocated in accordance with the regulations for payment of pension benefits accrued with respect to service in Ontario. Payment by employer to defined benefit pension plan

(2) The amount that the employer is required to pay under subsection (1) is in addition to the amounts that the employer is liable to pay under subsection 21 (2). Payment additional to other amounts

(3) The employer shall pay the amount required under subsection (1) to the administrator, insurer or trustee of the defined benefit pension plan in the manner prescribed by the regulations. Manner of payment

33.—(1) The Commission has a lien and charge upon the assets of the employer of employees who are members of a defined benefit pension plan in respect of which the Commission pays money out of the Fund. Lien for payment out of Fund

(2) The lien and charge under subsection (1) is in an amount equal to the amount of the payment out of the Fund plus interest calculated at the rate and in the manner prescribed by the regulations. Amount of lien

(3) The lien and charge under subsection (1) does not affect assets that are real property until a notice of the lien and charge that includes a description of the real property is registered in the proper land registry office and the Commission may so register notice of the lien and charge. Notice of lien

s. 38 (1),
amended

9.—(1) Subsection 38 (1) of the said Act is amended by adding thereto the following clause:

(aa) prescribing any matter referred to in this Act as prescribed by the regulations.

s. 38 (1) (b)
(xiv),
amended

(2) Subclause 38 (1) (b) (xiv) of the said Act is amended by adding at the end thereof “and prescribing conditions to which any such variance shall be subject”.

s. 38 (1),
amended

(3) The said subsection 38 (1) is further amended by adding thereto the following clause:

(ga) where the Minister is satisfied that it is in the best interest of the members of the pension plan and in the public interest, designating employees or pension plans, or any class thereof, that are excepted from the application of any provision of this Act or the regulations.

s. 38a,
enacted

10. The said Act is amended by adding thereto the following section:

Service

38a.—(1) Any notice or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by registered mail addressed to the person to whom it is to be given, served or delivered at his last known address.

When service
deemed
made

(2) A notice or other document sent by registered mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the seventh day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he did not receive the notice, order or other document until a later date through absence, accident, illness or other cause beyond his control.

Commence-
ment

11. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

12. The short title of this Act is the *Pension Benefits Amendment Act, 1983*.