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Questions and Answers on the New Grow-in Rules under Section 74 of the Pension Benefits Act

Q1. What is "grow-in"?

A1. As of July 1, 2012, a pension plan member is entitled to grow-in to certain benefits (referred to as "grow-in benefits") if his or her pension plan provides defined benefits, and he or she ceases to be a member because his or her employment is terminated (subject to some limited exceptions) or the plan is wound up. This right entitles the eligible plan member to receive the pension beginning on the date on which the member would have been entitled to an enhanced or unreduced pension under the pension plan, if his or her employment or membership had continued to that date.

To be eligible for grow-in benefits:

- the member must be employed in Ontario at the time of wind up or termination of employment;
- the member's age plus years of continuous employment or membership in the plan at the effective date of wind up or the effective date of termination must equal at least fifty five (55); and
- the member must not be a member of a Jointly-Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP) that has opted out of providing grow-in benefits.

To be eligible to grow-in to bridging benefits under the plan the member must have at least ten years of continuous employment with the employer or have been a member of the plan for at least ten years.

Please note that the legislation limits the rights of a plan member who is a construction employee within the meaning of Ontario Regulation 285/01 made under the Employment Standards Act, 2000 to receive grow-in benefits.

Please also note that if a member is entitled to grow-in benefits, the dollar amount of the benefits the member will receive are based on the benefits that have been earned (or accrued) up to the relevant date.

For example, a plan may provide that a member is entitled to begin receiving an unreduced pension when

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he or she reaches 60 years of age. The plan also offers a bridging benefit payable from age 60 to age 65. If a member's membership is terminated when he or she is 48 and at the date of termination the member has 10 years of continuous employment or membership in the plan, the member would be eligible to begin receiving an unreduced pension when he or she is 60. This is because the member's age plus years of continuous employment or membership in the plan is equal to at least 55 on the effective date of termination. The pension the member will receive will be based on the benefits he or she earned as at the effective date of wind up or termination and would also include the bridging benefit offered under the pension plan because the member has 10 years of continuous employment with the employer or has been a member of the plan for 10 years. -06/12

Q2. How are the new grow-in provisions different from those in effect before July 1, 2012?

A2. Prior to July 1, 2012, eligible members of a pension plan that provided defined benefits were entitled to receive grow-in benefits only when they ceased to be members of their pension plans on the wind up of the plans. As of July 1, 2012, eligible members will be entitled to grow-in benefits in a broader set of circumstances (referred to in the new grow-in provisions as "activating events"). -06/12

Q3. What circumstances trigger payment of grow-in benefits?

A3. As of July 1, 2012, the legislation identifies the following as "activating events" that will trigger the payment of grow-in benefits:

- the wind up of the pension plan;
- the employer's termination of the member's employment without cause, if the effective date of termination is on or after July 1, 2012; and
- the member resigns before the termination date specified in a written notice of termination of employment given to him or her by the employer. -06/12

Q4. What circumstances will not trigger the payment of grow-in benefits?

A4. The legislation excludes the following circumstances from being "activating events":

- termination of the member's employment, if it is a result of willful misconduct, disobedience, or willful neglect of duty by the member that is not trivial, and has not been condoned by the employer;
- the member is only on temporarily lay-off (as defined in subsection 56(2) of the Employment Standards Act, 2000); and
- termination of a member, if the member is a "construction employee" (as defined in Regulation 285/01 made under the Employment Standards Act, 2000).

In these circumstances members will not be entitled to be paid grow-in benefits. -06/12

Q5. I received notice that my employment with XYZ Inc. will be terminated on September 30, 2012. I got a job offer in another province and intend to resign from XYZ Inc. on July 15,

2012. Will I still be entitled to grow in benefits?

A5. Yes, you are still entitled to grow-in benefits if you resign before the termination date specified in the written notice of termination of employment given to you by your employer. -06/12

Q6. My employment was terminated on June 30, 2012 and the pension plan is not being wound up. Am I entitled to grow-in benefits?

A6. No. Since your employment was terminated before July 1, 2012, and there was no full or partial wind up of the pension plan, you are not entitled to grow-in benefits. -06/12

Q7. I am employed in Ontario and my pension plan is registered with British Columbia. My employment was terminated on July 1, 2012. Am I entitled to grow-in benefits?

A7. You are entitled to grow-in benefits if:

- your age, plus years of continuous employment or membership in the plan total at least 55 on your termination date; **and**
- you do not fall into one of the circumstances that are excluded from grow-in. -06/12

Opting Out of Grow-in

Q8. Can a pension plan elect to opt out of providing grow-in benefits under section 74 (grow-in for members) of the Pension Benefits Act?

A8. Only Jointly Sponsored Pension Plans (JSPPs) and Multi-Employer Pension Plans (MEPPs) can be excluded from the operation of section 74 of the Pension Benefits Act (PBA).

For a JSPP, the election may be made by the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members). For a MEPP, the plan administrator (Board of Trustees) may make the election. The effective date of the election must be on or after July 1, 2012 and it cannot be earlier than the date on which the election is filed with the Superintendent. -06/12

Q9. Once the decision to opt out of providing grow-in is made and an election has been filed with the Superintendent, can the election be rescinded?

A9. Yes, the election to opt out may be rescinded any time after it is filed with the Superintendent. The rescission takes effect when notice of the rescission is filed with the Superintendent or on a later date specified in the notice. -06/12

Q10. Is there a deadline for making the election to opt out of grow-in?

A10. Yes. A pension plan that is already a Jointly Sponsored Pension Plan (JSPP) or Multi-Employer Pension Plan (MEPP) on July 1, 2012 had until July 1, 2013 to make and file the election to opt out of grow-in.

A pension plan that becomes either a JSPP or a MEPP after July 1, 2012 has one year after the date it becomes a JSPP or a MEPP to make and file the election to opt out of grow-in. -08/2014

Q11. How should the election to opt out of grow-in be made?

A11. The notice of election to opt out of grow-in may be included in a letter to the Superintendent or FSCO. For a Jointly Sponsored Pension Plan (JSPP), the notice of election must be signed by an individual who is authorized to sign the election on behalf of the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and members (or representatives of the members) of the JSPP. For a Multi-Employer Pension Plan (MEPP), the notice of election must be signed by the administrator of the MEPP, or an individual who is authorized to sign the election on behalf of the administrator of the MEPP.

The signed notice of election must be filed with the Superintendent of the Financial Services at:

Attn: Pension Division
Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85, 4th Floor
Toronto ON M2N 6L9 -06/12

Q12. What information must be included in the notice of election?

A12. The notice of election must include the following:

- the name of the pension plan;
- the plan's registration number;
- a statement that an election is being made to exclude the pension plan (include its full name and registration number) and its members from the operation of section 74 of the PBA;
- the name and address of the plan administrator;
- the name, address and contact information of a representative of the administrator who is able to respond to questions from FSCO relating to the election; and
- the effective date of the election to opt out of providing grow-in benefits. (Note that the effective date of the election cannot be before the date it is filed with the Superintendent.)

For a Jointly Sponsored Pension Plan (JSPP), the notice of election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the employers (or any persons or entities who make contributions on behalf of employers or who represent the employers) and members (or representatives of the members) of the JSPP.

For a Multi-Employer Pension Plan (MEPP), the notice of election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the plan administrator, or an individual who is authorized to sign the election on behalf of the

administrator. -06/12

Q13. I am the administrator of a Multi-Employer Pension Plan (MEPP) that is registered in British Columbia and that has Ontario plan members. Can I elect to opt out of grow-in under Section 74 of the PBA?

A13. Yes, you can elect to opt-out of grow-in by filing the notice of election with the Superintendent of Pensions of British Columbia. Note that you must send a copy of the signed notice of election with the Superintendent of the Financial Services at:

Attn: Pension Division
Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85, 4th Floor
Toronto ON M2N 6L9 -06/12

Q14. Can the effective date of the election be before July 1, 2012?

A14. No. The provision that permits a JSPP or MEPP to be excluded from the operation of section 74 only comes into effect on July 1, 2012. Therefore, the effective date of the election cannot be before July 1, 2012. -06/12

Q15. Can the effective date of the election be before the date the election is filed with the Superintendent?

A15. No. The effective date of the notice of election cannot be before the date the election is filed with the Superintendent. However, the notice of election can specify an effective date that is after the date the notice is filed with the Superintendent. If the effective date of the notice of election is before the date it is filed and received by the Superintendent, the election will not be valid. A new notice of election will need to be filed and it will need to have a valid effective date. -06/12

Q16. Does a plan administrator have to notify plan members, the union and its pension advisory committee (if applicable) that it has elected to opt out of providing grow-in?

A16. Yes. Plan members, individuals who are eligible or required to join the plan, trade unions and pension advisory committees where they have been established by members and former members under section 24 of the PBA, must be given notice of the election and the effective date of the election.

Written notice must be given to:

- plan members employed in Ontario in the first annual statement that is transmitted to members after the election is filed with the Superintendent;
- a trade union that represents members employed in Ontario and to the pension advisory committee, if any, established under section 24 of the PBA, within 90 days, after the election is filed with the Superintendent;
- each person who, on or after the effective date of the election, is eligible or required to become

a plan member and is employed in Ontario within 60 days prior to the date on which the person will become eligible or is required to become a member. Where the person is eligible to become a member of the plan upon commencing employment, notice must be provided within sixty days after the person commences employment. In all cases the notice is to be included in the information to be provided to the person under subsection 25(1) of the PBA. -06/12

Q17. Our pension plan does not want to opt out of providing grow-in benefits. Do we need to file anything with the Superintendent?

A17. If your pension plan is a Jointly Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP), and a decision is made not to opt out of providing grow-in, you do not need to file anything with the Superintendent. A notice of election only needs to be filed with the Superintendent if your JSPP or MEPP decides to opt out of grow-in. -06/12

Q18. How do I know if my pension plan is a Multi-Employer Pension Plan (MEPP) or a Jointly-Sponsored Pension Plan (JSPP)?

A18. Please check with your plan administrator, to find out whether your pension plan is a JSPP or MEPP. Alternatively, you may also find this information in your employee booklet, your annual statement, or in other documents that were provided to you by the plan administrator when you joined the pension plan. You can also check [FSCO's website](#) for Pension Plan Access Information. -06/12

Q19. Who do I contact to find out if my pension plan has elected to opt out of providing grow-in benefits?

A19. If your pension plan is a Jointly-Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP), and has elected to opt out of providing grow-in benefits, if you are employed in Ontario you will receive a notice of the election and the effective date of the election in the first annual statement that is transmitted to you after the election is filed with the Superintendent. Your union and/or pension advisory committee (if any) will receive notice of the election and the effective date of the election as well within 90 days after the election is filed.

You may also contact your plan administrator for this information. -06/12