



SECTION:	Membership
INDEX NO.:	M100-100
TITLE:	Eligibility for Membership in a Pension Plan - PBA ss. 1(1), 10(1)2, 25, 31, 32, 33, 52(1) and 80 - Regulation 909 s. 38
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 2012)
EFFECTIVE DATE:	March 20, 2012 [updated – April 2013]
REPLACES:	C100-300 (in part), C100-801, C100-890, M100-800

This policy replaces part of C100-300 (Class and Eligibility) that pertains to eligibility issues, C100-801 (Part-time Employees and YMPE Test), C100-890 (Seasonal Workers) and M100-800 (Students Generally Not Eligible) as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fSCO.gov.on.ca. All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

When a pension plan is established, section 10(1)2 of the PBA requires the plan documents to set out the conditions for membership in the plan. One of the conditions that the plan text should specify is the eligibility requirements for membership in the plan.

The purpose of this policy is to explain the eligibility requirements that an employee would be required to satisfy under the PBA, before he or she is entitled to become a member of the plan.

This policy is organized under the following sections:

1. **Eligibility for Membership in a Pension Plan**
 - 1.1 **Eligibility Requirements for a Single-Employer Pension Plan**
 - 1.2 **Eligibility Requirements for a Multi-Employer Pension Plan**
2. **Change in Employment Status Under Single-Employer Pension Plans**
3. **Non-Permanent Positions (Contract Workers, Seasonal Workers and Students)**
4. **Sale of the Employer's Business**
5. **Information for New Members**

APPENDIX A Frequently Asked Questions

1. Eligibility for Membership in a Pension Plan

Section 31 of the PBA establishes the minimum eligibility requirements for membership in a pension plan. Section 52(1) of the PBA prohibits the consideration of an employee's gender when determining the eligibility requirements. (Note: There are other prohibited grounds for discrimination under the [Human Rights Code, R.S.O. 1990, c. H.19](#), that may impact the eligibility for membership, such as eligibility based on the age of an employee.)

The pension plan may have less stringent eligibility requirements than those that the employee would be required to satisfy under the PBA. However, the plan's eligibility requirements cannot be more stringent than those that are set out in the PBA. Once an employee has satisfied the eligibility requirements, the pension plan cannot delay the employee's entry into the plan until a later date (with an exception for administrative purposes as explained below). If the pension plan provides optional membership, an employee can choose to defer his or her entry into the pension plan. For information on optional membership, see Policy [M100-502 \(Mandatory versus Optional Membership in a Pension Plan\)](#).

If an employee belongs in a class of employees for whom the pension plan is maintained, and he or she has satisfied the eligibility requirements for membership, the employee is entitled to become a member of that plan (see Policy [M100-300 \(Class of Employees\)](#) for information about class of employees). Neither the terms of a collective agreement nor the terms of a pension plan can override the rights given to the employee by the PBA. For example, a bargaining agent in a union negotiated pension plan cannot act on behalf of its members to contract out of, or negotiate away, the union member's right to membership in the plan.

Below are the eligibility requirements under the PBA that apply to single-employer and multi-employer pension plans.

1.1 Eligibility Requirements for a Single-Employer Pension Plan

The eligibility requirements that an employee must satisfy before he or she is entitled to become a member of a single-employer pension plan are based on a period of "continuous" employment with the employer. Under section 1(1) of the PBA, continuous employment may include:

- periods of temporary suspension of employment due to temporary leaves of absence (e.g., maternity leave, parental leave or emergency leave); and
- periods of lay-off from employment.

The eligibility requirements for full-time and part-time employees differ as follows:

a) Full-time employee (section 31(2) of the PBA)

A full-time employee is entitled to become a member of a single-employer pension plan after completing 24 months of continuous full-time employment.

If the plan is *contributory* and the employee's eligibility date for membership in the plan falls within a pay period, a reasonable delay in membership enrolment (e.g., the start of the following pay period) is acceptable for administrative purposes. The Superintendent of Financial Services (Superintendent) may also consider, on a case-by-case basis, any other proposals for delaying membership enrolment due to administrative purposes.

If the plan is *non-contributory*, there should be no delay in enrolling an employee in the pension plan. The employee should be enrolled in the plan as soon as he or she satisfies the eligibility requirements for membership.

Example 1:

Company A sponsors a *contributory* defined benefit pension plan. Andrew accepted full-time employment with Company A on September 15, 2008. He worked continuously for the next 24 months and was entitled to join the plan on September 15, 2010. However, September 15, 2010 fell in the middle of a pay period. Therefore, Andrew was enrolled in the plan and became a member on September 27, 2010 (i.e., the start of the following pay period).

Example 2:

Company B sponsors a *non-contributory* defined benefit pension plan. Hannah accepted full-time employment with Company B on September 15, 2008. She worked continuously for the next 24 months. Hannah was entitled to join the plan on September 15, 2010, and she became a member on that date.

b) Part-time employee (sections 31(3), 31(5) and 32 of the PBA)

A part-time employee is entitled to become a member of a single-employer pension plan after completing 24 months of continuous part-time employment if the employee satisfies, in each of the two consecutive calendar years immediately prior to membership in the plan, one of the following two tests (whichever is satisfied first):

- earnings of not less than 35 percent of the Year's Maximum Pensionable Earnings (YMPE) as defined under the Canada Pension Plan (earnings test); or
- 700 hours of employment (hours test).

This means:

- an employee who satisfies the earnings test in year one and the hours test in year two must be permitted to join the pension plan after completing 24 months of continuous employment;
- an employee who satisfies the hours test in year one and the earnings test in year two must be permitted to join the pension plan after completing 24 months of continuous employment;
- an employee who satisfies the earnings test in both years one and two must be permitted to join the pension plan after completing 24 months of continuous employment; or
- an employee who satisfies the hours test in both years one and two must be permitted to join the pension plan after completing 24 months of continuous employment.

Please note the following:

- For the earnings test, the total amount of the employee's taxable employment income must be taken into account.
- For the hours test, the total number of hours worked, including overtime, must be taken into account.
- The Superintendent may also approve another test to determine eligibility requirements for membership in the plan, if the Superintendent is of the opinion that the other test is equivalent in the circumstances to the earnings test.
- Once a part-time employee becomes a member of the plan, the employee does not lose his or her membership status by reason only that he or she does not meet the earnings test or hours test in a subsequent calendar year.

If the plan is *contributory* and the employee's eligibility date for membership in the plan falls within a pay period, a reasonable delay in membership enrolment (e.g., the start of the following pay period) is acceptable for administrative purposes. The Superintendent may also consider, on a case-by-case basis, any other proposals for delaying membership enrolment due to administrative purposes.

If the plan is *non-contributory*, there should be no delay in enrolling an employee in the pension plan. The employee should be enrolled in the plan as soon as he or she satisfies the eligibility requirements for membership.

Example 1:

Company C sponsors a *contributory* defined contribution pension plan. Matthew accepted part-time employment with Company C on April 15, 2008. In 2008, Matthew only satisfied the earnings test. In 2009, he satisfied both the hours test and earnings test.

By April 15, 2010, Matthew worked continuously for 24 months on a part-time basis. Since Matthew satisfied the earnings test in 2008, and both the earnings test and hours test in 2009, he was entitled to join the plan on April 15, 2010. However, April 15, 2010 fell in the middle of a pay period. Therefore, Matthew was enrolled in the plan and became a member on April 26, 2010 (i.e., the start of the following pay period).

Example 2:

Company D sponsors a *contributory* defined benefit pension plan. Susan accepted part-time employment with Company D on December 15, 2005. In 2005, Susan did not satisfy either the earnings test or the hours test. In 2006, Susan satisfied both tests. In 2007, Susan did not satisfy either test because she took unpaid time off from work between February 15 and November 26, 2007.

In 2008 and 2009, Susan satisfied both the earnings test and hours test. Susan was entitled to join the plan on January 1, 2010, and she became a member on that date.

Example 3:

Company E sponsors a *contributory* defined benefit pension plan. Ken accepted part-time employment with Company E on February 15, 2008. In 2008 and 2009, he satisfied both the earnings test and hours test.

By February 15, 2010, Ken worked continuously for 24 months on a part-time basis. However, February 15, 2010 fell in the middle of a pay period. Therefore, Ken was enrolled in the plan and became a member on February 18, 2010 (i.e., the start of the following pay period).

Example 4:

Company F sponsors a *non-contributory* defined benefit pension plan. Carrie accepted part-time employment with Company F on February 15, 2008. In 2008 and 2009, she satisfied both the earnings test and hours test.

By February 15, 2010, Carrie worked continuously for 24 months on a part-time basis. Carrie was entitled to join the plan on February 15, 2010, and she became a member on that date.

1.2 Eligibility Requirements for a Multi-Employer Pension Plan

The eligibility requirements that an employee must satisfy before he or she is entitled to become a member of a multi-employer pension plan, are based on the employee's earnings and hours of employment with all the participating employers. Employment does not have to be continuous to satisfy the eligibility requirements.

The eligibility requirements that apply to multi-employer pension plans are set out in sections 31(4), 31(5) and 32 of the PBA. A full-time or part-time employee is entitled to become a member of a multi-employer pension plan if the employee satisfies, in each of the two consecutive calendar years immediately before the year in which he or she applies for membership, one of the following two tests (whichever is satisfied first):

- earnings of not less than 35 percent of the Year's Maximum Pensionable Earnings (YMPE) as defined under the Canada Pension Plan, with one or more of the participating employers (earnings test); or
- 700 hours of employment with one or more of the participating employers (hours test).

This means:

- an employee who satisfies the earnings test in year one and the hours test in year two must be permitted to join the pension plan;
- an employee who satisfies the hours test in year one and the earnings test in year two must be permitted to join the pension plan;
- an employee who satisfies the earnings test in both years one and two must be permitted to join the pension plan; or
- an employee who satisfies the hours test in years both one and two must be permitted to join the pension plan.

Please note the following:

- For the earnings test, the total amount of the employee's taxable employment income from all the participating employers must be taken into account.
- For the hours test, the total number of hours worked, including overtime, with all the participating employers must be taken into account.
- The Superintendent may also approve another test to determine eligibility requirements for membership in the plan, if the Superintendent is of the opinion that the other test is equivalent in the circumstances to the earnings test.
- Once the employee becomes a member of the plan, the employee does not lose his or her membership status by reason only that he or she does not meet the earnings test or hours test in a subsequent calendar year.

If the plan is *contributory* and the employee's eligibility date for membership in the plan falls within a pay period, a reasonable delay in membership enrolment (e.g., the start of the following pay period) is acceptable for administrative purposes. The Superintendent may also consider, on a case-by-case basis, any other proposals for delaying membership enrolment due to administrative purposes.

If the plan is *non-contributory*, there should be no delay in enrolling an employee in the pension plan. The employee should be enrolled in the plan as soon as he or she satisfies the eligibility requirements for membership.

Example 1:

Company W and Company X are participating employers of a multi-employer pension plan. Ruth commenced full-time employment with Company W on February 15, 2008. She terminated her employment with Company W on June 30, 2008. On July 15, 2008, Ruth commenced part-time employment with Company X. She satisfied both the earnings test and hours test in 2008 and 2009. Ruth was entitled to join the plan on January 1, 2010, and she became a member on that date.

Example 2:

Company Y and Company Z are participating employers of a multi-employer pension plan. Peter commenced part-time employment with Company Y on November 15, 2006. Peter terminated his employment with Company Y on May 15, 2007. He did not satisfy the earnings test or the hours test in 2006 and 2007. On February 15, 2008, Peter commenced full-time employment with Company Z. He satisfied both the earnings test and hours test in 2008 and 2009. Peter was entitled to join the plan on January 1, 2010, and he became a member on that date.

2. Change in Employment Status Under Single-Employer Pension Plans

If the employment status of an employee changes from part-time to full-time (or vice versa) during the eligibility period, the eligibility requirements that the employee has to satisfy in order to join the plan may also change. This means that if a part-time employee becomes a full-time employee during the eligibility period, he or she may have to satisfy the eligibility requirements that apply to full-time employees. Similarly, if a full-time employee becomes a part-time employee during the eligibility period, he or she may have to satisfy the eligibility requirements that apply to part-time employees.

Example 1:

Company M is the sponsor of a single-employer defined benefit pension plan. Ginger commenced *part-time* employment with Company M on December 15, 2006. Ginger did not satisfy either the earnings test or the hours test in 2006, but she satisfied both tests in 2007.

On January 15, 2008, Ginger became a *full-time* employee. Since Ginger's employment status changed from part-time to full-time in 2008, she was required to satisfy the eligibility requirements that apply to full-time employees. Ginger worked continuously on a *full-time* basis for the next 24 months. Ginger was entitled to join the plan on January 15, 2010, and she became a member on that date.

Example 2:

Company N is the sponsor of a single-employer defined contribution pension plan. Ross commenced *full-time* employment with Company N on January 15, 2007.

On September 15, 2008, Ross became a *part-time* employee. Since Ross' employment status changed from full-time to part-time in 2008, he was required to satisfy the eligibility requirements that apply to part-time employees. Ross worked continuously on a *part-time* basis for the next 24 months. He also satisfied both the earnings test and the hours test in 2007 (as a full-time employee) and 2008 (as a full-time and part-time employee). Ross was entitled to join the plan on September 15, 2010, and he became a member on that date.

3. Non-Permanent Positions (Contract Workers, Seasonal Workers and Students)

Generally, a contract worker is hired by an employer on a temporary basis. A contract worker's employment is terminated when his or her employment contract expires.

Seasonal workers are employed in an industry where the availability of work is dependent on the seasons. For example, seasonal workers are typically found in industries such as farming, fishing, tourism, etc.

Students may work only during the summer, during the school term under a co-op program, or they may work part-time while continuing their studies.

As mentioned earlier in this policy, any employee who belongs in a class of employees for whom the pension plan is maintained is entitled to become a member of that plan if he or she satisfies the eligibility requirements for membership in the plan. In the event of a dispute, the Superintendent will consider the nature and terms of employment to determine whether the employee belongs in the same class as the other employees in accordance with section 33 of the PBA.

The difference in eligibility requirements for non-permanent workers under single-employer pension plans and multi-employer pension plans is explained below.

a) Non-permanent positions under single-employer pension plans

Non-permanent workers who terminate their employment relationship each year could meet the definition of "continuous" under section 1(1) of the PBA if they are able to demonstrate a consistent pattern of employment with the same employer, despite any annual layoffs. If they are able to meet the "continuous" definition, membership must be offered to them if they belong to the class of employees for whom the single-employer pension plan was established, and if they satisfy the eligibility requirements for membership in the plan.

b) Non-permanent positions under multi-employer pension plans

Membership must be offered to non-permanent workers if they belong to the class of employees for whom the multi-employer pension plan was established, and if they satisfy the eligibility requirements for membership in the plan.

4. Sale of the Employer's Business

Section 80 of the PBA provides that where there is a sale of the employer's business (or the assets of that business) and the purchaser provides a pension plan for the employees of the seller, the period of employment with the seller is counted towards satisfying the eligibility requirements under the purchaser's plan. In such situations:

- If an employee is not a member of the seller's plan on the date of the sale, he or she would have to satisfy the eligibility requirements for membership in the purchaser's plan based on service with the purchaser.
- If an employee is a member of the seller's plan on the date of the sale, he or she will continue to maintain membership status, regardless of the eligibility requirements for membership under the purchaser's plan.

For example:

Company ABC (seller) sponsors a pension plan that requires a full-time employee to become a member of the plan after completing *12 months* of continuous full-time employment.

Company XYZ (purchaser) sponsors a pension plan that requires a full-time employee to become a member of the plan after completing *24 months* of continuous full-time employment.

a) First scenario

On the date when Company ABC was sold to Company XYZ, John was not a member of Company ABC's pension plan. He had completed only 8 months of continuous full-time employment.

John accepted employment with Company XYZ. Before John is entitled to become a member of Company XYZ's pension plan, he must complete an additional 16 months of continuous full-time employment (24 months less 8 months of his continuous employment with Company ABC).

b) Second scenario

On the date when Company ABC was sold to Company XYZ, Jane was a member of Company ABC's pension plan. She had completed 20 months of continuous full-time employment.

Jane accepted employment with Company XYZ. Since Jane was already a member of Company ABC's pension plan on the date of the sale, she immediately became a member of Company XYZ's pension plan, even though she did not complete 24 months of continuous employment.

5. Information for New Members

In accordance with section 25 of the PBA, the administrator of a pension plan (administrator) is required to provide each employee who will be eligible, or is required to become a member of the pension plan, with the following information in writing:

- an explanation of the provisions of the plan that apply to the employee;
- an explanation of the employee's rights and obligations in respect of the plan; and
- any other information that may be required under the Regulation.

In accordance with section 38 of the Regulation, the above information must be provided to the employee:

- within 60 days after the date the employee commences employment if he or she is eligible to become a member on the employment commencement date (i.e., for plans that provide immediate membership);
- within 60 days before the date the employee will become eligible for membership in the plan (i.e., for plans that have a waiting period to join); or
- within 60 days after the date the pension plan is established if the employee becomes a member on the plan establishment date (i.e., for newly established plans).

The employer(s) must provide the administrator with information that is necessary to enable the administrator to comply with the requirements set out in section 25 of the PBA. The information must be provided by the employer in sufficient time to enable the administrator to comply with the time limits that are set out in section 38 of the Regulation.

The administrator should have a formal enrolment process to document the enrolment of employees into the pension plan. The process should specify what information must be given to the employees and when it must be provided to them. For additional information on the enrolment process, see Policy [M100-502 \(Mandatory versus Optional Membership in a Pension Plan\)](#).

APPENDIX A

Frequently Asked Questions

Q. If an employer decides to establish a pension plan, must membership be offered to all employees?

A. No, the employer may establish a pension plan for a particular group or “class of employees”. In determining whether an employee belongs to that class, the nature and terms of employment are relevant considerations. However, once a pension plan is established for a particular class, all employees who belong to that class (including part-time employees) are eligible to join the plan. For additional information on class of employees, see Policy [M100-300 \(Class of Employees\)](#).

Q. Can a pension plan have a general provision that waives eligibility requirements for certain employees, e.g., in cases where the employer wishes to offer early enrolment in the plan as an enticement in hiring preferred personnel.

A. Yes, as long as there is a provision in the plan text that explicitly authorizes this action.

Q. Can a pension plan have different eligibility requirements for membership in the plan, for the different classes of employees?

A. Yes, a pension plan may have different eligibility requirements for the different classes of employees. For example, the plan may allow members of one class to become eligible for membership before members of another class. The plan may also require mandatory membership for one class and optional membership for another class. For information on class of employees, see Policy [M100-300 \(Class of Employees\)](#).

Q. During the collective bargaining process, can a union act on behalf of its members to contract out of, or negotiate away, an individual’s right to become a member of the pension plan?

A. No, the PBA requires membership to be offered to all employees who belong to the class of employees for whom the plan was established. The terms of the collective agreement cannot override the rights given to an employee by the PBA.

Q. Can a part-time employee satisfy the earnings test in the first year and the hours test in the second year?

A. Yes, the employee may satisfy different tests each year (i.e., whichever test the employee is able to satisfy first).

Q. If an employer that sponsors more than one pension plan has an employee who will be transferring from one plan to another (for example, from an hourly to a salaried plan), must service under the first plan be applied towards the eligibility requirements in the second plan?

A. Yes, the service under the first plan must be applied towards the eligibility requirements in the second plan. The PBA does not require that one must satisfy the eligibility requirements within a specific class of employees for whom the pension plan was established. Therefore, in the example, if an employee who is a member of the hourly pension plan becomes a salaried employee, the employee is entitled to join the salaried pension plan immediately, without having to satisfy the eligibility requirements under the salaried plan.