



SECTION:	Membership
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APPROVED BY:	Superintendent of Financial Services
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REPLACES:	C100-100 (in part), C100-300 (in part), C100-650

This policy replaces the “Class of Employees” section of C100-100 (Clarification (formerly Interpretation Bulletin I)), the sections of C100-300 (Class and Eligibility) that pertain to class issues and C100-650 (Individuals) 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.*

The purpose of this policy is to explain the meaning of the term “class of employees” under sections 31, 33 and 34 of the PBA, and to discuss when different classes may be formed under a pension plan.

Meaning of “Class of Employees”

A pension plan may be established for all employees or for a particular group or “class of employees”. It is up to the employer (or the employer and union, where there is a union involved) to choose the class of employees for whom a plan will be established. The class must not contravene any applicable law, and membership within the class should be determinable and clear, and identify a defined group. Coverage cannot be denied solely based on part-time status. Legitimate differences in the nature or terms of employment should be the basis for making distinctions about plan coverage. Once a pension plan is established for a particular class of employees, every employee in that class is eligible to join the plan.

The key provisions in the PBA that apply to a class of employees are found in sections 31, 33 and 34 of the PBA. If there is a dispute about whether an employee is a member of a particular class of employees for whom a pension plan is established or maintained, the Superintendent of Financial Services (Superintendent) may, by order, require the

administrator of the pension plan (administrator) to accept the employee as a member. The Superintendent may make the order if he or she is of the opinion that the employee is a member of the class based on the nature or terms of employment. (Note: The term “order” refers to a written directive from the Superintendent that requires an administrator to take an action, or refrain from taking an action, with respect to a pension plan.)

Any of the following groups could make up a class of employees:

- employees who are paid on a salaried basis;
- employees who are paid on an hourly basis;
- employees who are members of a trade union;
- employees who are not members of a trade union;
- supervisory employees;
- management employees;
- executive employees;
- corporate officers;
- employees who are also significant shareholders; and
- any other identifiable groups that are acceptable to the Superintendent.

A single pension plan may cover more than one class of employees. In such cases, the terms of the pension plan should clearly set out which employees are covered under each class and the plan provisions that apply to them. Alternatively, separate pension plans may be established for different classes of employees.

If an employee changes his or her position within the company, the employee’s class may also change. The treatment of the employee’s accrued benefits under his or her former class must be specified in the relevant plan text(s).

Part-time Employees

Pension coverage cannot be denied to part-time employees solely based on their part-time status. If part-time employees belong in a class of employees for whom the pension plan is maintained, they are entitled to join the pension plan once they have satisfied the eligibility conditions for membership in the plan.

The PBA permits separate pension plans to be established for full-time and part-time employees if the pension plan for part-time employees provides pension benefits and other benefits that are “reasonably equivalent” to those that are provided to full-time employees. For additional information, see Policy M100-400 (Separate Pension Plan for Part-Time Employees - Reasonably Equivalent Pension Benefits and Other Benefits).

Criteria for Determining a “Class of Employees”

Many class-related issues are plan-specific. In such cases, the terms of the specific pension plan will determine the answer to the issue, subject to the legislative minimums. Below are general guidelines that address whether a person or group of persons may constitute a separate class:

(a) Individuals as Separate Classes

In general, a named individual cannot constitute a class. If special pension provisions are to be made for that named individual, it should be in the form of a separate pension plan (often known as an Individual Pension Plan).

A class can consist of a small number of individuals if they make up a readily identifiable group (e.g., vice-presidents of a corporation).

(b) Different Location

It may be possible to separate employees into different classes based on their location of employment. In certain circumstances, if some employees are located in a different province, a separate class may be created for them to address different legal requirements of that province.

(c) Optional Membership in the Pension Plan

New employees who decide not to become members when they are first eligible to join the plan (i.e., for plans with optional membership), and who later decide to become members, may not constitute a separate class on that basis alone.

(d) Change in Plan Provisions and Date of Hire

A class distinction may be tied to membership under a prior pension arrangement. For example, an employer can amend the plan to provide a different benefit structure for those who are hired on or after a specified date. Separate classes may be formed to distinguish those who are entitled to pension benefits under the old and new benefit structures.

Inquiries to FSCO Staff on Class-Related Matters

When making inquiries to FSCO staff on class-related matters, it is important to provide all of the relevant facts with full disclosure of the context. Details concerning the nature and terms of employment (e.g., the location of employment, the type of work, the job content and functions, union representation, etc.) should be disclosed. FSCO staff will review each submission on a case-by-case basis, in light of the circumstances that are relevant to the particular pension plan.