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SECTION:	Benefits
INDEX NO.:	W100-111
TITLE:	Credited Service for Employment Standards Act, 2000 Notice Period PBA ss. 36, 37, 74(1), 74(1.3), 74(5), and 74(6)
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	W100-110

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This policy replaces W100-110 (Credited Service for Employment Standards Act, 2000 Notice Period) 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](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

### **Accrual of service & benefits on wind up**

When a pension plan is wound up, a pension plan member (member) is entitled on the wind up to continue accruing service and benefits in the plan beyond the wind up date, for the period of the notice of termination of employment required under Part XV of the Employment Standards Act, 2000, S.O. 2000, Chapter 41 (the ESA). Subsection 74(5) of the PBA states that membership in a pension plan that is wound up includes the period of notice of termination of employment required under Part XV of the ESA (required notice period). However, subsection 74(6) of the PBA states that subsection 74(5) does not apply for the purpose of calculating the amount of the member's pension benefit, if the member is required to make contributions to the pension fund unless the member makes the contributions in respect of the required notice period.

Therefore in a plan where members are required to make contributions to the pension fund, they must be given an opportunity to make the contributions in respect of the required notice period.

### **Accrual of service & benefits on employer's termination of member's employment**

A member is not only entitled to accrue service and benefits in the plan for the period of the notice of termination of employment required under the ESA on the wind up of a plan. A member is also entitled to accrue service and benefits in the plan during the period of the notice of termination of employment required under the ESA where an employer

terminates the member's employment, outside of the context of a plan wind up, without notice or with less notice than is required under section 57 or 58 of the ESA. Sections 61 and 62 of the ESA require that under such circumstances, the required notice period under section 57 or 58 must be included in the calculation of the pension benefit, or the commuted value of the pension benefit.

Therefore, the required notice period must be included in calculating a pension benefit under sections 36 and 37 of the PBA where the employer has terminated the employment of the member without notice or with less notice than is required under section 57 or 58.