

## Policy Bulletin #29

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# Notification of Adverse Amendments

Section 15 of the *Employment Pension Plans Act (the Act)* requires pension plan administrators to provide an explanation or summary of a proposed amendment, in advance of the effect date, if the amendment has an adverse effect. This notice must be provided to **all** members, (**as well as** to other people with an **unconditional** entitlement to a benefit from the Plan). Under s.13.1 of the Regulation, the notification must be issued 45 days prior to the effective date of the amendment.

This Bulletin has no legal authority. The *Employment Pension Plans Act (the Act)* and the *Employment Pension Plans Regulation (the Regulation)* should be used to determine specific legislative requirements.

Section 1(9) of the Regulation states that an amendment is considered adverse if it “negatively affects the person’s entitlement or potential entitlement to a benefit or increases the cost to the member of securing a benefit”. To assist plan administrators in determining when advance notice of a proposed amendment is required, following examples of amendments are considered to be adverse to plan members. This is not an exhaustive list.

### Examples of Adverse Amendments

1. Reduction in future service accruals
  - Reduction in employer and/or employee contributions under a defined contribution provision.
  - Reduction in the benefit formula under a defined benefit provision.
2. Increase in cost to members in a plan with a defined benefit provision
  - Increase in member required contribution rate with no corresponding increase in benefit levels.
3. Overall reduction in level of benefit earned **after** the effective date of the amendment.
  - Removal of cost of living increases to pensions,
  - Change in normal form of benefit from single life guaranteed 15 years to single life with no guarantee, or
  - Changes to calculation of average earnings that have the effect of lowering pensionable earnings.

4. Increase in requirements to qualify for a benefit
  - Increase in age-plus-service factor to qualify for subsidized early retirement
5. Cancellation of ancillary benefits
  - Removal of an ancillary benefit such as enhanced early retirement (Note that ancillary benefits cannot be cancelled for an individual who has already become entitled to the benefit because that would constitute a retroactive reduction in benefits).
6. The elimination or reduction of a plan-specific minimum benefit provisions, if the plan provision was more generous than the minimum standards required by the Act and Regulation.
  - Switching FROM a plan requirement that a member will earn a pension with a commuted value at least equal to twice the member's contribution with interest TO the "50% rule" under s.37(1) of the Act.
7. Amendments that lengthen vesting requirements
  - Change of vesting requirements FROM being immediately vested **to** becoming vested after 2 years of plan membership.

**Retroactive Reductions**

Amendments that retroactively reduce a member's accrued benefits are generally not permitted under the Act. There are only two exceptions to this rule, and both are subject to the explicit written consent of the Superintendent. Specifically:

- Specified Multi-Employer Pension Plans that are unable to meet the funding requirements of s.48 of the Regulation.
- Pension plans that are terminating due to insolvency of the plan sponsor and assets are insufficient to cover all liabilities.

**Notice to Affected Parties**

Section 15 (1)(a.1) of the Act and section 13.1 of the Regulation require that the administrator provide notice of an adverse amendment to

- (a) each active member who could be adversely affected by the proposed amendment
- (b) each other person who is unconditionally entitled to a benefit, either currently or to be paid in future, and who could be adversely affected by the proposed amendment. Those persons could be any of:
  - a deferred vested member,
  - a pensioner,
  - a surviving pension partner (married or common-law spouse of a deceased member) who is entitled to or is receiving a benefit from the plan,
  - a former pension partner who is entitled to benefits from the plan due to a matrimonial property settlement, or
  - a beneficiary of a deceased member who has not yet been paid out.

The notice must include an explanation or summary of that amendment.

Where the amendment is filed with the Superintendent and the Superintendent requires changes to the amendment before it is registered, the administrator shall, within 90 days of the amendment being registered, advise all those who were originally notified of the changes that were made.

Advance notice of an adverse amendment satisfies the general requirement in section 15(1)(a)(i)(B) of the Act for an administrator to advise plan members and prospective members of all amendments.

**For further information please contact:**

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