

Policy Bulletin #7
Membership in a Pension Plan

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This Bulletin outlines the requirements of the *Employment Pension Plans Act* (the Act) and the *Employment Pension Plans Regulation* (the Regulation) with respect to membership in a pension plan. It sets out the rules regarding eligibility for membership, termination of membership, suspension of membership, and re-employment of a pensioner.

This Bulletin has no legal authority. The Act and Regulation should be used to determine specific legislative requirements.

Legislative Requirements

Requirements relating to eligibility for membership are set out in section 29 of the Act and section 30 of the Regulation. The definition of "years of continuous employment" (section 1(1)(ccc) of the Act) is also relevant.

Section 1(1)(xx) of the Act defines termination of membership.

Section 30(1) of the Act and section 30 of the Regulation set out the rules that must be followed if a pension plan sponsor wishes to permit ongoing employees to suspend membership in a pension plan.

Section 31 of the Regulation sets out requirements where a pensioner becomes re-employed in a service or employment which is covered by the plan.

Eligibility for Membership

CLASSES OF EMPLOYEES

A pension plan must set out what classes of employees the plan covers. "Classes" could include employees in any of the following categories, as defined in the Regulation: paid a salary, paid on an hourly basis, supervisory, management, executive, members of a trade union, "out of scope" (i.e., not members of a trade union), officers of the company, significant shareholders, or any other identifiable group of employees acceptable to the Superintendent.

The acceptance of an identifiable group of employees to constitute a class of members under section 30(1)(k) and 30(1.1) of the Regulation requires a written application by the Plan administrator for acceptance of that class of employees. The consent of the Superintendent to approve an identifiable group as an acceptable class of employees will be made on a case-by-case basis given the circumstances relevant in the particular pension plan.

YEARS OF CONTINUOUS EMPLOYMENT

An employee who belongs to a class covered by the pension plan must be given the opportunity to become a plan member after no more than two "years of continuous employment" with the employer. The employee must also meet the minimum earnings test, earning, in each year, at least 35% of the Canada Pension Plan's Year's Maximum Pensionable Earnings (YMPE) for the year in question. In a plan where enrolment is optional, the employee must meet the earnings test for the two years prior to applying for enrolment.

"Continuous employment" can include a period of leave or lay-off of up to 52 weeks before and after which the employer employed the employee, as long as no actual cessation of employment has occurred. Criteria for judging whether an actual cessation has occurred could include whether the individual's job is being held for him or her, whether the individual continues to be enrolled in any of the employer's other benefit plans, or any other relevant indicator of whether a relationship continues to exist.

In a Specified Multi-Employer Pension Plan (SMEPP), "years of continuous employment" means plan fiscal years during which the person has performed at least 350 hours of employment covered by the plan. A person is eligible to become a member of a SMEPP when he has met this minimum requirement during two consecutive fiscal years of the plan. The minimum earnings requirement also applies to SMEPP members.

In a Multi-Unit Pension Plan, "years of continuous employment" means years of employment with one employer, or, if the plan permits, with more than one employer, including any breaks in employment that may be permitted by the plan.

Where an employee has met the employment and earnings requirements, enrolment must be permitted the first day of the month following the month in which both requirements have been met.

MANDATORY OR OPTIONAL ENROLMENT

Plans may make membership mandatory or optional to employees who belong to the covered classes. Plans may require or offer immediate enrolment or specify a time for enrolment that is any time up to the end of the maximum waiting period outlined in the preceding paragraph. If a plan offers optional enrolment, it must continue to offer opportunities to enroll, at least once every 6 months, on the first day of the plan's fiscal year and on the first day of the seventh month of the fiscal year.

Different employers in a multi-unit or specified multi-employer plan may have different classes of employees covered by the plan.

PART-TIME EMPLOYEES

An employer must allow part-time employees who meet the minimum length of employment and earnings requirements to join the pension plan if the employee is in a class of employees covered by the plan. Alternatively, the employer may set up a separate plan for part-time employees as long as the plan is comparable in value, taking into account the differences in the number of hours worked, to the plan for full-time employees in that class. It is permissible for an employer to have a defined benefit plan for full-time employees and a defined contribution plan for part-time employees as long as they are comparable in value.

Termination of Membership

Termination of plan membership occurs if:

1. the member terminates employment,
2. the member dies,
3. the member's plan is terminated, or
4. the member commences to receive a pension

Under a single employer plan, termination of membership also occurs if:

1. the member changes jobs within the company and is no longer in a class of employment covered by the plan or any other plan sponsored by the employer, or
2. the plan is amended to eliminate the member's class of employment, as prescribed in section 30 of the Regulation, from eligibility to continue membership in the plan.

Under a specified multi-employer pension plan, termination of membership is not tied to employment with a particular employer, but occurs if:

1. the member incurs a break in service as defined by the pension plan, or
2. a member has less than 350 hours of covered employment in two consecutive plan years and elects to transfer the vested benefit

Under a Multi-Unit Plan, termination of membership depends on the provisions of the plan. Upon cessation of employment with a participating employer, the plan can provide the member with the option to wait until the end of a period that does not exceed one year before declaring himself/herself as terminated. Alternatively, the plan can require that the member must wait for the expiration of that period. If a member returns to employment within the specified period with any participating employer, and the plan so specifies, termination of membership is not deemed to occur and the member is credited with an additional service for vesting and locking-in purposes.

The foregoing circumstances are the only times that termination of membership can occur. Benefits are paid only when a member terminates membership in the plan.

Suspension of Membership

A plan may have a provision allowing members to suspend membership in the plan. The Act does not require that a plan permit suspension; however, if a plan sponsor wishes to offer this option to plan members then the plan must contain a clause providing for it.

Where a plan sponsor elects to allow members to suspend membership in the plan, the plan:

1. must permit the member to lift the suspension and again commence to accrue full benefits under the plan on either the first day of the plan fiscal year or the first day of the seventh month of each plan fiscal year.
2. may provide that the member does not accrue benefits during the period of suspension, and
3. may provide that if a member is already vested and locked-in at the date that membership is suspended, and the value of the benefit is greater than the maximum commutable amount prescribed under section 45 of the Regulation, then the member may elect to transfer the value of the benefit to a Locked-In Retirement Account (LIRA).

Suspension of membership does not constitute termination of membership nor does it mean the member has opted out of the plan. A suspended member is still a member of the pension plan. Service continues to count for vesting and locking-in purposes, no further eligibility requirements need be met to lift a suspension, and all disclosure information, including annual statements, must continue to be provided to the member.

EMPLOYMENT IN A CLASS NOT COVERED

With the exception noted below, the pension plan cannot force the suspension of a member's membership in the plan where a member has entered a class of employment that is not covered by the pension plan. Rather, the member terminates plan membership and is entitled to termination benefits, including the portability benefits prescribed by the Act. The exception, as permitted by sections 35(11) and 38(9) of the Act, is that a pension plan may suspend membership if the member has entered a class of employment that is covered by another pension plan to which the employer must contribute on the member's behalf.

In such circumstances, the plan may postpone the member's entitlement to a transfer from the first plan until the member terminates membership in the second plan.

Suspension of All Members

Under section 70(3) of the Act, where all members of a pension plan elect to suspend their membership in the plan, the pension plan is deemed to have terminated and assets must be disbursed.

DC Member Force-Out

Where a member commences membership in a pension plan after August 10, 2006, does not earn any entitlements under a defined benefit provision, and subsequently terminates membership in the plan, the plan may force the member to elect a portability option upon his termination of membership.

Closure of a Pension Plan to New Entrants

Subject to the consent of the Superintendent, a plan may close the plan to enrolment of new members by reference to a specific date identified in the plan text. The closure of membership would apply to all employees of the employer who, in the absence of this provision, would otherwise have been permitted to enroll in the plan.

The closure of membership to new entrants in a particular pension plan will be permitted only if the persons so excluded are automatically entitled to become members in another pension plan sponsored by the same employer.

NOTE: A pension plan may create a class of employees, part of the same pension plan, solely based on date of hire, in accordance with section 30(1.1) of the Regulation, and subject to acceptance by the Superintendent.

Re-Employment of a Pensioner

A plan with defined benefit provisions **must** provide that where a former member of the plan who has commenced to receive his pension recommences work or service in an employment covered by the plan,

- a) payment of the pension is to continue and he is not eligible to become a member, or
- b) payment of the pension is to be suspended and he is to again become a member in the DB provision, with effect from the date of his commencing that subsequent employment,

however, the plan may make the provisions specified in both clauses (a) and (b) applicable under differing circumstances. One example of a differing circumstance is pension commencement prior to age 65 vs. pension commencement subsequent to age 65.

A pension plan with both defined benefit and defined contribution provisions may allow a retiree to return to work, continue to receive his monthly pension, and earn additional benefits under the DC provisions of the pension plan. While not specifically contemplated under section 31 of the Regulation, this option is considered to be more favourable to the member, in consideration of the intent of the Act, per section 29 of the Act.

Where pensions are not being paid from the plan (i.e. funds have been transferred out to purchase a LIF or an annuity), a person who recommences employment is a new employee and must be permitted to join the plan when eligible.

For rules regarding the rehiring of a DC RIA participant See [Policy Bulletin #30 – Defined Contribution Retirement Income Accounts](#).

For further information, please contact

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