



## Benefit Plans, O Reg 286/01

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### Employment Standards Act, 2000

#### ONTARIO REGULATION 286/01

#### BENEFIT PLANS

**Consolidation Period:** From January 1, 2018 to the e-Laws currency date.

Last amendment: 527/17.

*This is the English version of a bilingual regulation.*

#### Definitions

**1.** For the purposes of Part XIII of the Act and this Regulation,

“actuarial basis” means the assumptions and methods generally accepted and used by fellows of the Canadian Institute of Actuaries to establish, in relation to the contingencies of human life such as death, accident, sickness and disease, the costs of pension benefits, life insurance, disability insurance, health insurance and other similar benefits, including their actuarial equivalents; (“méthode actuarielle”)

“age” means any age of 18 years or more and less than 65 years; (“âge”)

“benefits” includes,

- (a) an aggregate, annual, monthly or other periodic amount or the accrual of such an amount to which an employee, or the employee’s beneficiaries, survivors or dependants is, are or will become entitled under a benefit plan provided on superannuation, retirement, disability, accident or sickness,
- (b) any medical, hospital, nursing, drug or dental expenses or other similar amounts or expenses paid under a benefit plan, and
- (c) any amounts under a benefit plan to which an employee is entitled on termination of employment or to which any person is entitled upon the death of an employee; (“prestations”)

“dependant” means a dependant as defined in the relevant benefit plan, and “dependent child” and “dependent spouse” have corresponding meanings; (“personne à charge”)

“disability benefit plan” means a benefit plan that provides benefits to an employee for loss of income because of sickness, accident or disability; (“régime de prestations d’invalidité”)

“former Act” means the *Employment Standards Act*, R.S.O. 1990, c. E.14; (“ancienne loi”)

“health benefit plan” means a benefit plan that provides benefits to an employee, a spouse or a dependant of an employee or deceased employee for medical, hospital, nursing, drug or dental expenses or other similar expenses; (“régime de prestations de maladie”)

“life insurance plan” means a benefit plan that, on the employee’s death, provides a lump sum or periodic payments to the employee’s beneficiary, survivor or dependant, and includes accidental death and dismemberment insurance; (“régime d’assurance-vie”)

“long-term disability benefit plan” means a disability benefit plan under which the payments or benefits to an employee are payable for a period of not less than 52 weeks or until recovery, retirement or death, whichever period is shorter; (“régime de prestations d’invalidité de longue durée”)

“marital status” includes,

- (a) the condition of being an unmarried person who is supporting, in whole or in part, a dependent child or children, and
- (b) common law status as defined in the relevant benefit plan; (“état matrimonial”)

“normal pensionable date” means the date specified in a pension plan at which an employee can retire from his or her employment and receive the regular pension benefit provided by the pension plan, whether the date is the day on which the employee attains a given age or the day on which he or she has completed a given period of employment; (“date normale de retraite”)

“pension plan” means a benefit plan that provides benefits to a participating employee or to his or her spouse or dependant, on the employee’s retirement or termination of employment, out of contributions made by the employer or the employee or both and the investment income, gains, losses and expenses on or from those contributions, and includes,

- (a) a unit-benefit pension plan, under which the benefits are determined with reference to a percentage of salary or wages and length of employment or a specified period of employment,
- (b) a defined benefit pension plan, under which the benefits are determined as a fixed amount and with reference to length of employment or a specified period of employment,
- (c) a money purchase pension plan, under which the benefits are determined with reference to the accumulated amount of the contributions paid by or for the credit of an employee, and the investment income, gains, losses and expenses on or from those contributions,
- (d) a profit sharing pension plan, under which payments or contributions by an employer are determined by reference to profits or out of profits from the employer’s business, and the benefits are determined with reference to the accumulated amount of contributions paid by or for the credit of an employee and the investment income, gains, losses and expenses on or from those contributions,
- (e) a composite pension plan, which is any combination of the pension plans described in clauses (a) to (d), and
- (f) a pooled registered pension plan; (“régime de retraite”)

“pooled registered pension plan” has the same meaning as in the *Pooled Registered Pension Plans Act*, 2015; (“régime de pension agréé collectif”)

“sex” includes,

- (a) a distinction between employees that excludes an employee from a benefit under a benefit plan or gives an employee a preference to a benefit under a benefit plan because the employee is or is not a head of household, principal or primary wage earner or other similar condition, and
- (b) a distinction between employees in a benefit plan because of the pregnancy of a female employee; (“sexe”)

“short-term disability benefit plan” means a disability benefit plan other than a long-term disability benefit plan; (“régime de prestations d’invalidité de courte durée”)

“spouse” means a spouse as defined in the relevant benefit plan; (“conjoint”)

“voluntary additional contribution” means an additional contribution by an employee under a pension plan, except a contribution whose payment, under the terms of the plan, obliges the employer to make a concurrent additional contribution. (“cotisation facultative supplémentaire”) O. Reg. 286/01, s. 1; O. Reg. 335/05, s. 1; O. Reg. 527/17, s. 1.

#### **Pension plans, permitted differentiation re employee’s sex**

**2. (1)** The prohibition in **subsection 44 (1)** of the **Act** does not apply in respect of a differentiation in the rates of contribution by an employer to a pension plan if the differentiation is made on an actuarial basis because of an employee’s sex and in order to provide equal benefits under the plan. O. Reg. 286/01, s. 2 (1).

**(2)** The prohibition in **subsection 44 (1)** of the **Act** does not apply in respect of a differentiation made under a pension plan if,

- (a) the *Pension Benefits Act* applies to the pension plan; and
- (b) the differentiation is made,

- (i) because of an employee’s sex, and

- (ii) in respect of employment before January 1, 1987, other than employment that is described in **clause 52 (3) (b) or (c)** of the

*Pension Benefits Act*. O. Reg. 286/01, s. 2 (2).

(3) The prohibition in **subsection 44 (1)** of the **Act** does not apply in respect of a differentiation made under a pension plan if,

- (a) the *Pension Benefits Act* does not apply to the pension plan; and
- (b) the differentiation is made,
  - (i) because of an employee's sex, and
  - (ii) in respect of employment before July 12, 1988. O. Reg. 286/01, s. 2 (3).

(4) In subsections (2) and (3),

"differentiation" means a type of differentiation to which the prohibition in the predecessor of subsection 33 (2) of the former Act did not apply on December 31, 1987. O. Reg. 286/01, s. 2 (4).

#### **Pension plans, permitted differentiation re marital status**

**3. (1)** The prohibition in **subsection 44 (1)** of the **Act** does not apply to,

- (a) an increase in benefits payable to an employee under a pension plan that provides for the increased benefits because the employee has a dependent spouse;
- (b) a differentiation under a pension plan because of marital status, if the differentiation is made for the purpose of providing benefits that are payable periodically during the joint lives of an employee who is entitled to the pension and the employee's spouse, and thereafter during the life of the survivor of them, as provided in the pension plan; and
- (c) a differentiation in the rates of contribution of an employer to a defined benefit or a unit-benefit pension plan that provides an increase in benefits to an employee because of marital status, if the rates of contribution of the employer differentiate between employees because of marital status. O. Reg. 335/05, s. 2.

(2) For the purposes of clause (1) (b), benefits are deemed to be payable periodically despite the fact that they are commuted, if the amount of the annual benefit payable to the employee at the normal pensionable date is not more than 2 per cent of the Year's Maximum Pensionable Earnings, as defined in the *Canada Pension Plan* in the year that the employee terminated the employment. O. Reg. 286/01, s. 3 (2).

(3) Clause (1) (b) does not apply if the *Pension Benefits Act* applies to the pension plan and the plan contravenes the provisions of that Act respecting joint and survivor pensions. O. Reg. 286/01, s. 3 (3).

#### **Pension plans, permitted differentiation re employee's age**

**4. (1)** The prohibition in **subsection 44 (1)** of the **Act** does not apply in respect of a differentiation that is made on an actuarial basis because of an employee's age and that relates to,

- (a) the rates of voluntary additional contributions to a pension plan;
- (b) the rates of contributions that an employee is required to make to a money purchase or profit sharing pension plan;
- (c) the rates of contributions by an employer to a unit-benefit or defined benefit pension plan, unless the *Pension Benefits Act* applies to the plan and the plan contravenes the provisions of that Act respecting age differentiation;
- (d) the rates of contributions by an employer to a money purchase or profit sharing pension plan,
  - (i) when the employer transfers the assets from a unit-benefit or defined benefit pension plan to the money purchase or profit sharing pension plan, and
  - (ii) if the differentiation is made in order to protect employees' pension benefits from being adversely affected by the transfer; or
- (e) benefits payable to employees, if the *Pension Benefits Act*,
  - (i) permits the differentiation, or
  - (ii) does not apply to the pension plan. O. Reg. 286/01, s. 4 (1).

(2) Despite subsection (1), the requirement that a differentiation be determined on an actuarial basis does not apply to a differentiation described in clause (1) (a), (b) or (e) that is made in respect of the employment of a person before July 12, 1988. O. Reg. 286/01, s. 4 (2).

(3) The prohibition in **subsection 44 (1)** of the **Act** does not apply with respect to a provision in a pension plan that makes a differentiation because of age in establishing a normal pensionable date for voluntary retirees or an early voluntary retirement date or age, unless,

- (a) the *Pension Benefits Act* applies to the plan; and

(b) the plan contravenes the provisions of that Act respecting normal retirement dates and early retirement pensions. O. Reg. 286/01, s. 4 (3).

**(4)** The prohibition in **subsection 44 (1)** of the **Act** does not apply with respect to a differentiation because of age in the following, provided that the differentiation is in accordance with the *Pooled Registered Pension Plans Act* (Canada), as it applies for the purposes of the *Pooled Registered Pension Plans Act, 2015*:

1. In a provision of a pooled registered pension plan.
2. In the administration of a pooled registered pension plan.
3. In the administration of a retirement savings plan prescribed under the *Pooled Registered Pension Plans Act* (Canada), as it applies for the purposes of the *Pooled Registered Pension Plans Act, 2015*. O. Reg. 527/17, s. 2.

**Life insurance plans, permitted differentiation re employee's sex**

**5.** The prohibition in **subsection 44 (1)** of the **Act** does not apply to,

- (a) a differentiation in the contributions of an employee to a voluntary employee-pay-all life insurance plan that is made on an actuarial basis because of sex; and
- (b) a differentiation in the contributions of an employer to a life insurance plan that is made on an actuarial basis because of an employee's sex and in order to provide equal benefits under the plan. O. Reg. 286/01, s. 5.

**Life insurance plans, permitted differentiation re marital status**

**6. (1)** The prohibition in **subsection 44 (1)** of the **Act** does not apply to,

- (a) benefits under a life insurance plan that are payable periodically to the surviving spouse of a deceased employee for the life of the surviving spouse or until the surviving spouse becomes a spouse of another person;
- (b) a benefit under a life insurance plan that is payable to an employee on the death of his or her spouse; and
- (c) a differentiation in the contributions of an employee or an employer to a life insurance plan, if,
  - (i) the differentiation is made because of marital status, and
  - (ii) the life insurance plan provides benefits that are payable periodically to an employee's surviving spouse. O. Reg. 335/05, s. 3.

**(2)** Clause (1) (a) also applies to benefits of less than \$25 a month that have been commuted to a lump sum payment. O. Reg. 286/01, s. 6 (2).

**Life insurance plans, permitted differentiation re age**

**7.** The prohibition in **subsection 44 (1)** of the **Act** does not apply to,

- (a) a differentiation, made on an actuarial basis because of an employee's age, in benefits or contributions under a voluntary employee-pay-all life insurance plan; and
- (b) a differentiation, made on an actuarial basis because of an employee's age and in order to provide equal benefits under the plan, in an employer's contributions to a life insurance plan. O. Reg. 286/01, s. 7.

**Disability benefit plans, permitted differentiation re age, sex or leave of absence**

**8.** The prohibition in **subsection 44 (1)** of the **Act** does not apply to,

- (a) a differentiation, made on an actuarial basis because of an employee's age or sex, in the rate of contributions of an employee to a voluntary employee-pay-all short or long-term disability benefit plan; and
- (b) a differentiation, made on an actuarial basis because of an employee's age or sex and in order to provide equal benefits under the plan, in the rate of contributions of an employer to a short or long-term disability benefit plan. O. Reg. 286/01, s. 8.

**Health benefit plans, permitted differentiation re sex or marital status**

**9.** The prohibition in **subsection 44 (1)** of the **Act** does not apply to,

- (a) a differentiation, made on an actuarial basis because of sex, in the rate of contributions of an employee to a voluntary employee-pay-all health benefit plan;
- (b) a differentiation, made on an actuarial basis because of an employee's sex and in order to provide equal benefits under the plan, in the rate of contributions of an employer to a health benefit plan;
- (c) a differentiation in an employee's benefits or contributions under a health benefit plan because of marital status, if the differentiation is made in order to provide benefits for the employee's spouse or dependent child; and

- (d) a differentiation in the rate of contributions of an employer to a health benefit plan, where there are specified premium rates and where that differentiation for employees having marital status and for employees without marital status is on the same proportional basis. O. Reg. 335/05, s. 4.

#### **Participation in benefit plan during leave of absence**

**10. (1)** A benefit plan to which Part XIII of the Act applies shall not disentitle an employee who is on a leave of absence described in subsection (2) from continuing to participate in the benefit plan during the leave of absence, if the benefit plan entitles an employee who is on a leave of absence other than one described in subsection (2) to continue to participate. O. Reg. 286/01, s. 10 (1).

**(2)** This section applies to,

- (a) a leave of absence under Part XIV of the Act; and  
(b) any longer leave of absence that the employee has applied for under a provision in the contract of employment that prevails under subsection 5 (2) of the Act. O. Reg. 286/01, s. 10 (2).

#### **Former exclusion from certain benefit plans**

**11.** If an employee was excluded from participating in a benefit plan or in a benefit under a benefit plan before November 1, 1975 and ceased to be so excluded on that date, the employee is entitled to participate as of that date. O. Reg. 286/01, s. 11.

#### **Compliance not to be achieved by reductions**

**12.** No employer shall reduce the employer's contributions to or the benefits under a health benefit plan in causing the plan to comply with Part XIII of the Act and this Regulation, or with Part X of the former Act or a predecessor of that Part and the related regulations. O. Reg. 286/01, s. 12.

#### **Change to normal pensionable date under certain plans**

**13.** Despite the application of Part X of the former Act or a predecessor of that Part to a pension plan that was in existence on November 1, 1975, if the normal pensionable date of a class of employees was increased in order to have the plan comply with that Part, an employee who is a member of that class is entitled to pension benefits on the normal pensionable date as provided by the pension plan before it was increased. O. Reg. 286/01, s. 13.

**14.** Omitted (revokes other Regulations). O. Reg. 286/01, s. 14.

**15.** Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 286/01, s. 15.