COUGHLIN employee benefits specialists

COURIER

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AT A GLANCE ...

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Pension membership shifts to the public sector

For the first time in Canadian history, the majority of pension plan members work in the public sector, according to data released by Statistics Canada.

The statistics gathering agency reports that job losses resulting from the 2008-09 recession drove membership in private pension plans down by 2.1 per cent. As a result, 50.2 per cent of pension plan members, or 3.02 million people, work in the public sector. A decade ago, public sector workers accounted for 46 per cent of pension plan membership.

The largest membership decline occurred in defined benefit (DB) pension plans, which lost 3.6 per cent of the total membership. Defined contribution (DC) plan membership increased by 1.8 per cent. The increase in DC membership can be attributed to plan sponsors converting their old DB plans to DC arrangements.

Not surprisingly, the largest declines in pension plan membership occurred in the manufacturing sector, which saw 600,000 jobs disappear during the recession.

The Statistics Canada data indicated that the disparity in pension plan membership between men and women virtually disappeared during the recession. Prior to the economic slowdown, the number of men with pension plans outnumbered women by 265,000. With the loss of jobs in male-dominated industries, the pension plan membership gap has been eliminated.

As of January 1, 2010, a total of 19,128 pension plans were registered in Canada, Statistics Canada says. ❧

Ontario and Quebec agree on multi-jurisdiction pension rules

Ontario and Quebec have become the first provinces to adopt the Canadian Association of Pension Supervisory Authorities' (CAPSA) multi-jurisdiction reciprocal agreement on pension management.

Under the new agreement, which went into effect on July 1, 2011, pension plan sponsors with members in more than one province will be required to administer their plans under rules of the jurisdiction where the *plurality* of its *active* members are located. For example, a plan of 100 active members with 51 members located in Quebec and 49 members based in Ontario will be governed by Quebec's pension legislation, which would be considered the plan's *major authority*.

The same rules will apply when other provinces join the CAPSA agreement.

The agreement applies to administrative functions such as plan registration, funding, investment policies, record keeping, member disclosure practices and plan administrator duties.

The CAPSA rules do not apply to plans where an employer has business locations in only one province. (In such cases, the pension regulations of the host province will apply.)

For plan administrators, the CAPSA regulations will mean that pension benefit entitlements, dispute mechanisms, commuted value calculations, member statements and other administrative functions will be governed by the rules of the major authority. However, when it comes to *individual* member rights, such as vesting, pension portability, use of gender in commuted value calculations and postponed retirement rules, the laws of the province where the members work will continue to have precedence.

Plan funding will also be governed by the legislation of the major authority. However, should a minor authority require funding of a specific benefit, funding will have to be provided, even if the major authority does not require it.

Since workplace populations can change over time, the new CAPSA regulations allow for a change of governing jurisdiction under the following circumstances:

- when the number of active members in the major authority is less than the number employed in another jurisdiction for three consecutive fiscal years;
- when the number of active members in the major authority is less than 75 per cent of the number of active members in any other jurisdiction; or
- when the number of active members in the major authority falls to zero and there are active members employed in other jurisdictions.

The Ontario-Quebec agreement covers 64 per cent of multi-jurisdictional pension plans in Canada, CAPSA says.

Other provinces are expected to join the agreement later in 2011.

More information on the agreement can be found at the CAPSA website at www.capsa-acor.org under *Multi-jurisdictional pension plans.* ❧

Bill would outlaw genetic discrimination by insurers

Does life and health insurance encourage *genetic discrimination?*

The Ontario legislature was forced to consider the issue of genetic discrimination this May when a private member's bill was introduced to ban insurers from including family medical histories in life and health insurance applications.

The bill, introduced by government Member of Provincial Parliament Mike Colle, follows a number of declines of coverage to a chiropractor because her father had Huntington's disease.

According to Dr. Katie Lingard, a number of insurers refused to cover her for life or health insurance when she confirmed that her father had suffered from the disease. One insurer would not consider her application until she took a genetic test to prove that she didn't carry the gene for Huntington's disease.

The 25-year-old chiropractor is in good health but does not know if she carries the Huntington's gene. She is required to have the insurance to engage in her practice.

"It doesn't need to be this hard," the Chatham, Ontario practitioner says. *"It is already hard enough. As Canadians, it is instilled in us that people not be discriminated against based on disability, yet insurance companies discriminate freely based on a perceived and potential future disability."*

Dr. Lingard's position is opposed by the Canadian Life and Health Insurance Association (CLHIA), which argues that knowing potential insurance risks allows for fairer application, or pooling, of life insurance premiums among policyholders.

"If you don't assess the risk properly, then what you are really saying is let somebody else pay for my risk," says CLHIA Vice-President and General Counsel Frank Zinatelli.

While an insurer cannot require a person to undergo genetic testing before receiving coverage, it can request to have access to testing results should such tests be conducted, he explained. Similar rules apply to other medical tests and procedures.

If passed, the private member's bill would amend the province's Human Rights Code to outlaw genetic characteristics as grounds for discrimination. It would prevent insurers from denying or charging more for coverage based on an individual's genetic predisposition to disease. It would also prohibit employers from considering genetic information during hiring, promotion or termination of employees.

With a provincial election scheduled for October 2011, it is unlikely that the bill will pass. However, some jurisdictions in the United States and Europe have already enacted similar bills into law. ❧

No double maternity benefit for birth of twins

A federal court has turned down an Ottawa couple's move to receive twice their paid parental benefits following the birth of their twins.

The couple maintain that they were discriminated against when they only received a single maternity benefit — 35 weeks of paid Employment Insurance leave plus an additional 15 weeks of maternity benefits — despite giving birth to two children.

The parents argued that caring for twins requires far more work than single children. They also argued that maternity benefits should not be based on pregnancy but on the fact that two individuals were born from the single pregnancy. To do otherwise would constitute discrimination based on family status.

Upon birth of their two children, the couple filed for separate maternity and Employment Insurance benefits for each child for a total of 70 weeks of support. Their application was rejected by the Employment Insurance Commission. They then appealled that decision. The couple won that appeal. The Employment Insurance Commission then filed for a judicial review.

In his ruling, Mr. Justice Russel Zinn said that the level of care involved in providing for twins does not support an argument of discrimination.

"The fact that caring for twins may involve more work than caring for a single newborn does not prove historical disadvantage that perpetuates prejudice and stereotyping," he said. *"The policy of the Act is to grant a set amount of parental benefits after birth, regardless of the need or burden imposed. It does not calibrate benefits according to the burden imposed by a particular child's birth."*

In addition, he noted that *"it was entirely legitimate for the government to make choices in the allocation of benefits and it should be permitted a degree of latitude in doing so."*

For plan sponsors, the ruling appears to confirm their right to limit some benefits without facing charges of discrimination, providing the limits do not undermine basic human rights.

The couple plan to file an appeal with the Federal Court of Appeal. ❧

New US tax law may affect plan sponsors and administrators

A campaign by the United States Internal Revenue Service (IRS) to collect taxes from the one million Americans living in Canada could present privacy challenges to plan sponsors, insurers and financial institutions.

Under the American government's new Foreign Account Tax Compliance Act (FATCA), slated to come into effect in 2013, all non-US financial institutions will be expected to identify American nationals living in Canada as well as any bank accounts or other financial assets they may hold in this country.

The US law will apply to Americans resident in Canada as well as to those holding dual US-Canadian citizenship.

Under the new rules, Canadian banks, life insurance companies, mutual funds, securities brokers and related institutions will be expected to report individuals' Social Security Numbers and any account balances directly to the IRS for annual tax reporting.

The impact on Canadian plan sponsors is still unclear. However, it is conceivable that they, or their group insurer, may have to report any taxable benefits, RRSP and pension assets of US nationals or those with dual citizenship to the IRS on an annual basis.

The problem: Doing so may violate Canadian privacy laws.

According to Canadian Privacy Commissioner Jennifer Stoddart, the collection and transferring of personal information to the US may conflict with Canadian privacy rules and other regulations guaranteeing fair access to banking services. Under Canadian law, foreign nationals in Canada are only required to prove residency in the country in order to receive banking services, not their immigration status or citizenship.

While tax treaties exist between Canada and the United States, they *"are not a substitute for complying with the new law,"* according to US Treasury Office of International Tax Counsel spokesman Michael Plowgian. Institutions found to be in violation of FACTA could face a penalty of 30 per cent on their US income and financial transactions. The US subsidiaries of Canadian banks, insurers, pension funds and brokerages would be directly affected by the penalties.

The US says it may be open to exempting registered retirement plans such as RRSPs and corporate pensions from the law. However, tax-free saving accounts, registered education savings plans and other assets have not been targeted for possible exemption.

Unless exemptions from the law are secured, plan sponsors with members holding dual citizenship or employing US nationals should be prepared to report their members' assets to either their plan administrators or insurers for eventual reporting to the IRS beginning in the 2013 tax year. They should expect to receive privacy inquiries or challenges in doing so.

Lump sum payouts for extended health coverage to be taxable

The Canada Revenue Agency (CRA) has ruled that, beginning in 2012, lump sum payouts received in lieu of health and dental coverage will be considered a taxable benefit to plan members and retirees.

Until now, the CRA has said that lump sum payouts received by retirees or employees on cancellation of their extended health coverage (for example on retirement or severance from a job) were considered *"advance reimbursements of medical expenses"* and, therefore, exempt from taxation.

The amendment will not apply to payouts relating to employer insolvencies that occurred prior to 2012.

Differing survivor pension rules amount to 'discrimination', retirees say

A group of pensioners is accusing the Ontario Teachers' Pension Plan of discrimination.

According to the Ontario Teachers' Survivor Benefit Group (OTSBG), which represents selected retirees, widows and widowers enrolled in the pension plan, the pension violates human rights law by reducing survivor benefits to members' spouses when a couple marries after the retirement of the plan member.

Under current arrangements, the plan provides full survivor benefits to members' spouses if they are already married at the member's retirement. However, if a member marries after retirement and later dies, his/her surviving spouse receives a pension income for only 10 years following the retired member's death. In addition, retired members face an eight per cent reduction in pension income upon the enrolment of a spouse after retirement.

The OTSBG says that arrangement amounts to discrimination on the basis of marital status and gender and has filed a claim with the Ontario Human Rights Tribunal.

The retirees also say that similar public service pension plans, such as those offered to retired teachers in five other provinces, as well as the province's municipal employee pension plan, offer full pension benefits to surviving spouses, regardless of their marriage date.

The Ontario teachers' plan counters that it cannot afford the extra costs involved in financing the expansion of survivor payout arrangements.

"From what I understand, the other plans did that when they had a surplus. We certainly do not have a surplus," says plan spokesperson Deborah Allan.

Should the move by the retiree group be successful, sponsors of pension plans governed by Ontario regulations may have to review their survivor benefit provisions to ensure full provision of the benefits, regardless of plan funding or marital date of plan members.

With $107.5 billion in net assets in 2010, the Ontario Teachers' Pension Plan is one of Canada's largest pension plans. ❧

Long-term care costs to soar by 2050

The costs of long-term care will double, or even triple, by 2050 the Organization for Economic Co-operation and Development (OECD) says.

In its report entitled *"Help wanted? Providing and paying for long-term care"*, the economic and social policy advisory group warns that half of all people in OECD countries that require long-term care are age 80 or older.

Today, approximately one in 25 people in the 26-nation group fall into that age category. However, by 2050, that number will jump to one in 10 people, straining already stretched health care dollars.

According to the report, Japan will lead the way, with 17 per cent of its population being in the 80-plus age range by 2050. Germany will follow with 15 per cent in that age group.

The organization predicts that even well-off individuals could end up paying up to 60 per cent of their disposable income on long-term care costs by 2050.

While it urges governments to begin to improve their long-term care strategies to meet the demands of their aging populations, the OECD also notes that private insurance companies could play a leading role in funding long-term care. However, it warns, unless governments make long-term care insurance compulsory, it will likely remain a niche market for the insurance industry. ❧

Alberta court rejects freezing of DB benefit entitlements at conversion

An Alberta court has ruled that pension plan sponsors may not freeze plan members' accrued benefits during plan conversions.

The case involves a major oil exploration firm that was in the process of converting its defined benefit (DB) plan to a defined contribution (DC) agreement. Under the terms of the conversion, plan members' DB credits were preserved. However, their total salary and years of service credits were frozen for DB calculation purposes.

The province's Superintendent of Pensions objected to the move, stating that it amounted to a retroactive reduction of members' final pensions and therefore interfered with members' vested rights. The Superintendent then ordered the company to rescind the conversion, file revised valuation certificates and make additional contributions and interest payments to the plan.

The case then went to litigation.

The Alberta Court of Queen's Bench agreed with the Superintendent's actions. However, the employer appealled the ruling.

In reviewing the case, the Court of Appeal was asked to consider whether defined benefit plan calculations create a vested right for plan members or whether they could be reduced by amendments.

The Superintendent argued that since the original DB plan did not include a determination date in its benefit formula, the plan created a vested right for its members. Since that formula included provisions whereby a member's final pension calculations were based on the *highest five of a member's last 10 years of employment prior to the retirement date,* freezing the benefit to an earlier date would reduce a member's ultimate pension benefits.

In its argument, the employer maintained that a pension is vested only if a plan member retired today. Therefore, a pension entitlement could be adjusted to reflect today's situation.

Ultimately, the Court of Appeal sided with the Superintendent, stating that members had a right to benefits based on the five years of employment prior to their normal retirement date.

For plan sponsors, the Alberta court's decision means that plan members' DB entitlements cannot be frozen during conversions, unless their pension documents have a specific date for determining the defined benefit formula. If the plan documents have such a date, DB benefit entitlements could be frozen during plan conversions.

Close examination of the terms of plan entitlements should be considered prior to any pension plan conversions. ❧

Want to live longer? Join the Canadian Armed Forces

A Statistics Canada study comparing mortality rates of members of the Canadian Armed Forces and the rest of the Canadian population indicates that the members of the Canadian military have a 35 per cent lower chance of dying than the general population.

According to the *Canadian Forces Cancer and Mortality* study of the 188,161 people who joined the Canadian Armed Forces between 1972 and 2006, male members of the Forces had a 36 per cent lower death rate than the general population while females experienced a 33 per cent lower death rate.

The lower mortality rates were even more marked when cancer and heart disease rates were studied.

Male members had a 40 per cent lower chance of dying of cancer than other Canadians while their female colleagues had a 25 per cent lower mortality rate for cancer. When it came to heart disease, males experienced a 55 per cent reduction in deaths compared to others while female Forces members saw a 60 per cent reduction.

The Statistics Canada data did not include the 157 combat deaths from the war in Afghanistan.

"Canadian Forces personnel have to pass certain physical standards. So, we're generally a healthy population to start with," says spokesperson Col. Colin MacKay. *"It's hard to say whether the 35 per cent reduction in risk for mortality for all causes is attributable to the healthy worker effect. There may still be some effect from the culture within the Forces."*

The only negative in the study was that suicide rates among both men and women were higher than the general population among members in the 40-44 age range. The rate among women was twice the rate logged for the general population while the male rate was 1.46 times higher. The majority of suicides for both groups occurred after their release from the military. When all ages were reviewed, the suicide rate among Forces members was not significantly different from the rest of the population. ❧

Private sector must act to control drug plan costs

Canadian companies will have to take a hard look at their employee drug benefit plans or face benefit cuts and major cost increases, a senior advisor to government and private organizations says.

According to Helen Stevenson, former assistant deputy minister of the Ontario Ministry of Health and Long-Term Care and current chief executive officer of the Reformulary Group, a prescription drug plan consultant to employers, sponsors of private sector drug plans will have to take control of drug plan spending or face *"dire consequences."*

In her white paper entitled *"An end to blank cheques: getting more value out of employer drug plans,"* Ms. Stevenson warns that Canadian companies now spend $200 million per week on prescription drugs. Private sector spending on drugs reached $14 billion in 2009, she says, an annual growth rate of seven per cent. That compares to $11.4 billion in the public sector, a growth rate of just four per cent.

With costs increasing at that rate, plan sponsors in the private sector will have to take active measures to control drug costs before it's too late.

"Prescription drug costs can be managed but changes need to be made," she says. *"If nothing is done, the steady rise in the cost of these plans will continue and may even lead to dire consequences. The activities of the public sector have raised awareness about the drug systems and created an undeniable momentum towards change. It's time for the private sector to take action."*

According to Ms. Stevenson, four factors are contributing to the growth of drug costs in the private sector. They include:

- a willingness by plan sponsors to pay for almost every new drug at any cost;
- not fully utilizing the potential of generic medications;
- major differences in pricing and dispensing fees between pharmacies; and
- employee indifference about the cost of drugs and their impact on their benefit plans.

Clarifying the purpose of drug plans among employees, better management of drug formularies, the promotion of generic drug substitution and re-investing savings back into benefits plans could relieve drug cost pressures, Ms. Stevenson suggests.

Ms. Stevenson's views are echoed by Don Drummond, chief economist for the TD Bank. Writing in the forward of the white paper, Mr. Drummond stresses that both private sector employers and employees must pay closer attention to drug costs.

"Employers feel and act as though they are powerless to rein in the cost increases," he writes. *"This hurts many interests as companies pass the cost increases forward to consumers or backwards to their employees. As it is customers and employees who are hurt...everybody should pay attention."* ❧

One in seven are disabled, WHO says

More than one billion people, or one-seventh of the world's population, are living with a disability, according to the World Health Organization (WHO.)

In its first attempt in 50 years to track disabilities on a worldwide basis, the WHO adds that 200 million of the reported disabled are facing "significant difficulties" such as the denial of health care, education or other services.

Of the disabilities reported, two-thirds involve non-communicable diseases such as cardiovascular disease and cancer, the WHO says. The rest is spread almost evenly between infectious diseases such as polio and measles and injuries from accidents and falls.

Worldwide, 30 per cent of those with disabilities cope with "catastrophic" health expenses that force them into poverty, the United Nations-sponsored group says.

"Disability is part of the human condition," WHO Director-General Margaret Chan says. *"Almost every one of us will be permanently or temporarily disabled at some point in life."* ❧

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Fast facts

- The government of New Brunswick has announced that it plans to introduce a catastrophic drug care plan, beginning in the autumn of 2011. The new program is expected to be introduced in stages over the next two to four years. New Brunswick and Prince Edward Island are the only provinces with no catastrophic drug plans in place.
- British Columbia Premier Christy Clark says her government will provide free nicotine replacement therapies, including gum, patches or prescription drugs covered under that province's BC PharmaCare Program. Smokers wishing to kick the habit will be provided with a 12-week supply of covered medications free of charge beginning in September 2011.
- The Ontario legislature has unanimously amended the provincial Fire Protection and Prevention Act to allow the mandatory retirement of firefighters at age 60. The legislation gives municipalities two years to negotiate appropriate retirement provisions with their fire departments.
- The government of Manitoba has introduced legislation that would allow its superintendent of pensions to register liens against companies that fail to pay into their pension plan. The liens may be registered against all property, including real estate. In addition, directors may also be made liable for all pension plan contributions that their company has failed to pay.
- The savings generated by the generic drug legislation introduced by Ontario, Quebec, British Columbia and Alberta in 2010 and early 2011 could be in jeopardy if a free trade agreement between Canada and the European Union is adopted, the Canadian Generic Pharmaceutical Association (CGPA) says. According to the CGPA, the European Union has tabled proposals that would extend the patents on brand name drugs to bring them closer to European standards. If adopted, the proposals would add billions of dollars to drug costs. Pharmaceuticals account for more than 15 per cent of European Union exports to Canada.
- The Mental Health Commission of Canada says it will try to create voluntary national standards to improve mental health in the workplace. The establishment of health standards will help clarify who is responsible for maintaining mental health in the workplace, the Commission says. It will also help define what constitutes a psychologically healthy workplace. The move has been endorsed by federal Labour Minister Lisa Raitt and Human Resources and Skills Development Minister Diane Finley.
- The Conference Board of Canada reports that 78 per cent of short-term and 67 per cent of long-term disability claims are related to mental health issues. According to the Conference Board, 12 per cent of employees surveyed by that organization say they are experiencing mental health problems. Another 32 per cent said they had experienced mental health issues in the past.
- The Canadian Institute for Health Information (CIHI) says that drug expenditures grew by 4.8 per cent in 2010, the lowest rate since 1996. The average annual growth rate was 8.9 per cent between 2000 and 2005. Canadians spent more than $31 billion, or $912 per person, on prescription and non-prescription drugs, the CIHI says.
- Percentage of Canadian workers *"seriously considering"* leaving or changing their jobs, according to the 2011 edition of the Mercer *What's Working Survey:* **36**. Percentage that are happy with their base pay: **53**. Percentage that are satisfied with their overall benefits plan: **58**. ❧

PPN update

Greenboro Pharmacy has joined the Coughlin & Associates Ltd. Preferred Provider Network. They are located at 125 Tapiola Crescent in Ottawa. Their phone number is: 613-695-1177.

The following pharmacies are no longer members of the Coughlin PPN: Inniss Pharmacy, 769 Bank Street, Ottawa; Coulter's IDA Pharmacy, 1103 Bank Street, Ottawa; Jean Coutu Pharmacy, 2246 Laurier Street, Rockland; and Main Street Pharmacy, 192 Main Street, Ottawa. ❧

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