

Group Benefits - Into The Next Decade

We are now into the second decade of the new century and what a ride it has been so far. The financial markets have seen substantial gains and retrenchment over the past several months. The manufacturing sector in Canada and the United States has been hit hard, particularly the auto sector. The worldwide financial industry tottered on complete collapse. Deficit spending is once again in vogue. About the only thing that has remained constant is that the Toronto Maple Leafs can't win anywhere but in the stock market.

The recession, while serious in some sectors, has been somewhat more moderate in Canada than for our neighbours to the south, and this seems to be reflected in the employee benefits area. Canada has not seen a stampede to reduce benefits as a cost-savings measure. Some concessions have been seen in a few collective bargaining agreements – particularly in the auto sector – but for the most part, employers have managed to maintain their employee benefit plans by focusing on savings related to expenses and administration costs. Improvements to benefits, however, have been quite limited.

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Watch for Our E-Newsletter!

Cowan is always looking at ways to enhance our level of customer service. We are also focused on being environmentally friendly whenever possible. For readers who are currently receiving the newsletter by mail, we will be moving away from print versions of the newsletter starting in May 2010, in favour of electronic versions sent directly to your inbox.

To ensure successful delivery, we ask that you add our email address to your acceptable email list
bulletin@cowangroup.ca

If you would still like to receive the print version of the newsletter, please email maryann.stewart@cowangroup.ca.

We are beginning to see some activity in the benefits field as employers begin to feel more confident that the worst of the recession is behind us now. While increases to salaries are still slow to materialize, we are seeing a few enhancements to benefit plans as employers try to make the best of their financial situation. Minor improvements to the benefits plan can give employers a big bang for their buck. Employees appreciate the increase in coverage, and the impact on the employer's budget is usually smaller than salary increases.

One of the least expensive ways to improve a benefits plan is to introduce, or enhance, a Healthcare Spending Account (HCSA). HCSAs work like designated bank accounts with defined amounts for health care spending for expenses not otherwise covered by the group plan. Several employers have recognized this vehicle as the way to bolster their plan at minimal cost. The HCSA also puts a cap on future expenses, unlike traditional plans. With the declining popularity of true flex-benefits, the HCSA is a logical alternative.

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Trends in Pensions and Retirement Savings Programs

Last year in the world of retirement savings, discussion and debate continued amongst federal and provincial politicians, industry experts and plan sponsors regarding retirement income adequacy. In 2010, we expect to see more debate on this issue. So far, the experts appear to be divided on the health of the current retirement income system in Canada.

Despite stories in the media designed to strike fear about an impending retirement crisis and poverty amongst our elderly, several international bodies say Canada's retirement system is actually doing quite well.

According to the Melbourne Mercer Global Pension Index, Canada's retirement system actually ranks fourth at 73.2, which is just behind the Netherlands (76.1), Australia (74), and Sweden (73.5).

In addition, the Organization for Economic Co-operation and Development (OECD) states in its 2009 report that the proportion of retirement income coming from private pensions and other financial assets in Canada is one of the highest among OECD countries. Income safety nets for seniors

are among the highest in the OECD, helping Canada enjoy one of the lowest retiree poverty levels relative to average earnings.

On the other hand, there are many other organizations that have published papers to support the idea that Canada's retirement system needs a major overhaul or we will face impending dire circumstances. The Canadian Association of Retired Persons (CARP) also claims, "Unless workers save more than they currently do through the Canada Pension Plan, unacceptable levels of poverty among older Canadians will continue."

The Importance of Good Governance

Whatever the outcome of all this discussion and debate about the future of our retirement systems in Canada, Cowan believes the best plan of action for sponsors of capital accumulation plans is to continue to practice good governance. Plan sponsors are reminded that governance ensures best practices are followed, and the overall success of their programs. Good governance is closely related to the following: good plan design, regular monitoring of the program, proper documentation of all decisions, and effective communication.

Here is a list of actionable items to help plan sponsors practice good governance and help their plan members meet their retirement objectives:

1. Ensure there is a governance document in place that details the responsibilities of all the parties of the program.
2. Set or review plan objectives to ensure they line up with company objectives.
3. Review existing plan design, structure and plan provider to ensure appropriateness.
4. Review and confirm that all investment funds offered are appropriate including the default investment option.
5. Ensure the communication plan for the plan members is varied and makes an impact
6. Consider alternate plan designs for higher earners

If you have any questions about your company's retirement savings program, please contact your pension consultant or the author of this article, **Senior Pension Consultant Olga Knight** at: 519-650-6363 ext. 51652 or olga.knight@cowangroup.ca.

¹ Melbourne Centre for Financial Services, in collaboration with Mercer

² Canadian Institute of Actuaries, Retooling Canada's Ailing Pension System Now, For the Future, October 2009



Demystifying the Duty to Accommodate

Employers are faced with challenges on a daily basis. The duty to accommodate disabled employees to the point of undue hardship remains a significant challenge today and has been one of the most difficult legal issues affecting Canadian employers for several years. There have, however, been changes in the trends we are observing today.

The duty to accommodate to the point of undue hardship for the employer has been difficult to define. An employer must weigh the benefit of an accommodation to the employee versus the severity of the hardship to the employer. Each case needs to be treated on an individual basis.

Five or 10 years ago, employers would have had to prove it was impossible to accommodate an employee to prove undue hardship. Today, several court decisions suggest this has evolved to proof of whether the employer has made 'reasonable' efforts to accommodate an employee.

The Courts

The Ontario Human Rights Commission holds a clear position regarding limits to the Duty to Accommodate to the point of undue hardship. The primary factors used to assess the degree of hardship are:

- **The costs of an accommodation** – The cost of accommodation is considered 'hardship' only once it affects the survival of the organization or business, or changes the essential nature of the business.
- **Outside sources of funding** – Something to consider are accommodation funds, which are occasionally available through government grants and loans to offset the cost of an accommodation.
- **Potential safety risks** – An employer must consider the health and safety of all employees and ensure that no one is

assuming a serious risk in order to accommodate an employee.

Courts and arbitrators do not necessarily agree with the Ontario Human Rights Commission's parameters to define undue hardship. A recent Supreme Court of Canada decision stated that, "The employer's duty to accommodate ends where the employee is no longer able to fulfill the basic obligations associated with the employment relationship for the foreseeable future." The Judge further stated, "The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship".

What Does This Mean for Employers?

Judges and arbitrators agree that a measure of reasonableness is required when assessing for undue hardship. What this means for employers is that they are no longer obligated to prove that it is impossible to accommodate the employee's needs.

Any measure requiring the employer to change working conditions in a fundamental way is now considered undue hardship. Any measure that would modify the employment contract is also considered undue hardship. Furthermore, if the employer terminates the employee following accommodation, and the employee still cannot resume work in the foreseeable future, these grounds for termination may be considered justified.

Employers have a duty to accommodate but they also have the right to productive work from an employee.

For more information on the duty to accommodate, please contact your Cowan consultant or the author of this article, **Susan Novo, Manager of Health and Disability Management:** 519-741-3313 ext. 274 or susan.novo@cowangroup.ca.

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We have also seen an interest in more catastrophic plans, often partnered with a HCSA. Interest in this combination is popular with first-time plan sponsors looking for an inexpensive way to start a plan with built-in cost limitations for the future. Catastrophic plans emphasize coverage for the unforeseen medical contingencies that generate long-term, costly expenses such as new prescription medication, private duty nursing, long-term care and critical illnesses.

Early expenses in a catastrophic plan remain the responsibility of the member, often through high deductibles.

Alternatively, these plans can use an HCSA to cover routine and discretionary expenses and then use an insurance component to help when the expenses grow.

What will the next couple of years present? This surely depends on the economy and how sustained the recovery is. For now, employee benefits appear to have weathered the storm better than many anticipated. As a motivator and as a tool for recruitment and retention, benefits still set the pace for the human resources professional.

For more information, please contact your Cowan consultant, or the author of this article, **Benefits Consultant Fred Quinton** at: 519-650-6363 ext. 51101 or fred.quinton@cowangroup.ca.

With sources from:

Heenan Blaikie: The duty to accommodate disability in employment, Labour and Employment, Fall 2006 - Vol. XVI, No.4

The Ontario Human Rights Commission Factsheets/disability4, 2009, How Far Does the Duty to Accommodate Go?

Duty to Accommodate – Supreme Court of Canada Rehabilitates the Undue Hardship Threshold WeirFoulds LLP Litigation - Employment Update - Winter 2008, November 27, 2008

New Drug Strategy for Alberta

In 2010, Alberta is introducing a new strategy for their provincial drug plan as part of their Health Action Plan announced in April 2008. The new plan is a direct result of the pressures of escalating prescription drug costs and their impact on the provincial health system. Other provinces are considering their own response to the pressures of high-cost medications, and are likely monitoring Alberta's changes carefully.

The new Alberta model encompasses two initiatives. Phase 1 redesigns coverage for seniors, residents with non-group coverage (through Alberta Blue Cross) and those with rare diseases. It also will try to expedite the approval of new drugs in the province and make the system more transparent and public.

Phase 2 was recently announced with revised pricing now in effect for generic drugs for both private and public pricing. New generic medications will now be priced at 45% of their brand-name equivalent and, effective April 2010, all generics will fall into line with the new pricing. Alberta is the first province to enforce their generic pricing on the private sector. Perhaps other provinces, including Ontario, may not be far behind.

In addition to revised pricing, the province expects to announce in July 2010 new roles for pharmacists that should include a new payment model for expanded counseling and advisory roles played by the pharmacists.

While the impact on private insurance in Alberta is still yet to be assessed, it is reasonable to assume that these changes will benefit plan sponsors and insurers by lowering drug costs somewhat.



CPP Changes Now Law

In the July 2009 Employee Benefits Bulletin, we published details of proposed changes to the Canada Pension Plan (CPP) set out in last year's federal budget. On December 15th, 2009, these changes received Royal Assent in the Senate and became law.

In brief, the CPP has been amended to:

- Allow Canadians to take their retirement pension as early as age 60 without the requirement of a work interruption or earnings reduction (effective as of 2012).
- Increase the general drop-out rate – the number of low or zero earning years dropped from the contributory period – from 15% to 16% in 2012 (max drop-out of 7.5 years), and to 17% in 2014 (max drop-out of eight years).

- Require contributions to the CPP from people under the age of 65 who receive a retirement pension and continue working, thereby creating eligibility for a post-retirement benefit.
- Permit individuals aged 65 to 70 who receive a retirement pension to elect not to contribute to the CPP.
- Have the adjustment factors that apply to early or late take-up of retirement pensions fixed by regulation after December 31, 2010 (The Federal Finance Minister will meet with his provincial and territorial counterparts to review).
 - a. Starting in 2012, early pension reduction will gradually increase to 0.6% for each month before age 65 that a worker collects the pension. This will result in the

pension being reduced by 36% for a person who begins collecting it at age 60 after 2017.

- b. Starting in 2011, the late pension augmentation will increase gradually to 0.7% for each month that the worker waits to take his or her pension after the 65th birthday, up to age 70. This will be done over a period of three years and will result in the pension increasing by 42% for a person who begins collecting it at age 70 after 2014.

These changes will not affect anyone currently collecting CPP retirement benefits, or those who begin taking their benefit prior to 2012.

This bulletin is produced by the Benefits and Retirement Consulting Division of Cowan Insurance Group and its subsidiary, Wentworth Financial Services. We help public and private-sector clients manage their group benefits, retirement and health and disability management plans.

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