

DISPARITY IN TREATMENT CLAUSES IN PENSION AND GROUP INSURANCE PLANS IN QUÉBEC

In recent months, considerable discussion was centered on the future of Québec's retirement system. First, on November 2, 2017, the Québec government introduced Bill 149 to enhance the Québec Pension Plan (QPP).

Then, the release of the Fortin report on the disparity in treatment clauses ("orphan clauses"), based on date of hire, in pension plans and group insurance programs led to another public debate: should orphan clauses be prohibited in Québec to protect younger generations, in addition to the effects of the announced QPP enhancement?

On January 11, 2018, Mercer hosted a roundtable to gather feedback from employers on the matter, which can be summarized as follows:

1. The Québec *Act respecting labour standards* should not prohibit orphan clauses. The possibility of introducing such clauses gives employers the flexibility they need to adapt their offerings to the new generations in a consistent manner for all their employees in Canada;
2. Prohibiting orphan clauses would have devastating consequences. Employers will not return to defined benefit plans. If the same plan must be offered to all employees, employers will accelerate their migration to defined contribution plans, even if negotiating those plans might be arduous and cause major labour disputes;
3. If, despite these significant concerns, orphan clauses are prohibited, the prohibition should not apply to existing orphan clauses;
4. In any event, certain changes to programs for new workers, such as the introduction of equivalent programs, should not be considered to be orphan clauses. It is possible to simply establish the notion of equivalent programs in a total rewards approach.

More details on each of these points are provided below.

DEFINITION OF DISPARITY IN TREATMENT CLAUSES

According to the commonly accepted interpretation, an orphan clause consists in offering less advantageous work conditions to employees based solely on their date of hire. Such clauses have been introduced into many pension plans, but are rarely seen in group insurance programs.

All the participants at our roundtable felt it is necessary to differentiate this type of change from other changes made in the past and that **should not be considered orphan clauses**, such as:

1. Introduction of a different program that the employer can establish is of **equivalent value**, at the time of the changes, for the new employees. This flexibility in the employee offering is not a deviation from the notion of intergenerational equity. It is possible to establish the equivalency in a simple manner.
2. Conversion of a defined benefit pension plan to a defined contribution pension plan for all employees, with transition allowances to minimize disruption for more experienced workers.
3. Offering workers a choice between two programs.
4. An employer can, under certain circumstances, terminate programs for employees who, at a certain date, do not meet criteria based on age, service, or a combination of both. Such changes are common in group insurance programs.

ADAPT PLANS TO CURRENT REALITIES

Since the introduction of generous defined benefit plans in the 1970s and 1980s, the economic and demographic realities have changed dramatically, pushing employers to reassess their programs and adapt them to the new realities.

At the same time, employers do not want to introduce changes at the expense of their current workers, for whom they wish to respect the promises made at the time they were hired. Many of these employees are nearing retirement and a change to their programs can seriously impact their financial planning. To avoid affecting these employees, changes could be introduced more gradually in the organization, so as to respect the agreements already concluded with the current employees and to avoid issues related to constructive dismissals.

CURRENT SITUATION

According to statistics compiled by Mercer, slightly more than 40% of organizations have already introduced pension plan changes based on date of hire. Many of them made the changes with the objective of offering an equivalent program, but some of them introduced a less generous plan. Each situation is unique and could involve other elements of the employees' total rewards.

It should be noted that certain federal organizations with employees in Québec have also introduced orphan clauses in their pension plans for their new employees throughout Canada.

MAINTAIN CURRENT FLEXIBILITY

During our roundtable, the participants agreed that maintaining the current flexibility is unquestionably the only possible option, whether they have already introduced changes or not.

1. Employers who have already introduced changes negotiated those changes with their unionized

employees for the new employees only. Only on rare occasions did employees targeted by the new plans request going back to the previous plan.

If orphan clauses are prohibited in the future, employers do not intend to return to their previous defined benefit pension plans. They were burned by the risks and costs associated with those plans. Instead, they would actually accelerate their transition to defined contribution pension plans for the future. Employees who until now had kept their defined benefit pension plan during the transition period will have to migrate to a defined contribution pension plan, even if they are only a few years away from retirement.

Employers are hoping they will not have to reopen issues that have already been settled. Amending pension plans is a long and complicated undertaking. Renegotiations would be arduous and could lead to major and unwanted labour disputes.

2. Even employers who so far have not introduced orphan clauses are feeling uneasy about a possible prohibition. They feel that having the possibility to make such changes offers more flexibility for better meeting workers' changing needs.

The new generations of workers do not have the same demands regarding their employee benefits. They do not value the same elements. How will it be possible to adapt to this new reality without upsetting more experienced workers if orphan clauses are prohibited?

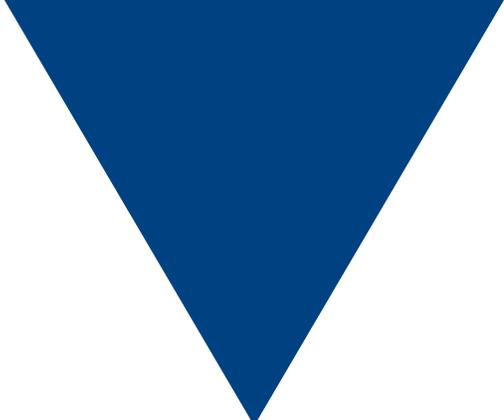
3. The use of orphan clauses in pension plans is also widely used in the other Canadian provinces. Major national employers informed us that evolving in a different context in Québec and in the other provinces will represent a major issue for their organizations in the fair treatment of all their workers in Canada. They also do not want orphan clauses to be prohibited.

CONCLUSION

A large consensus exists among employers. Being able to implement different employee benefit programs for the new generations of workers offers needed flexibility. Prohibiting orphan clauses would have adverse consequences for them and their employees. Older employees might be forced to migrate to a defined contribution pension plan a few years before their retirement. Younger employees will gain nothing as they will be offered defined contribution plans in any case.

Employers are currently facing a number of cost and workforce management issues. QPP contributions will be increasing over seven years, payroll taxes are by

far higher in Québec than elsewhere in Canada, labour standards are changing in Québec and Ontario, the rise in group insurance costs is out of control and the minimum wage is increasing faster than it did in the past. On top of these concerns, employers do not want to have to reopen issues that have already been settled, such as those related to pension plans and employee benefits. In many cases, these matters have already been settled in a responsible manner that respects promises already made. National employers do not want to have to treat their employees in Québec differently from their other Canadian workers.



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