

1994, chapter 24

AN ACT TO AMEND THE SUPPLEMENTAL PENSION PLANS ACT

Bill 20

Introduced by Madam Violette Trépanier, Minister of Income Security

Introduced 5 May 1994

Passage in principle 17 May 1994

Passage 17 June 1994

Assented to 17 June 1994

**Coming into force: 17 June 1994, except sections 7, 13 and 14 which will come into force
on the date or dates fixed by the Government**

Act amended:

Supplemental Pension Plans Act (R.S.Q., chapter R-15.1)





CHAPTER 24

An Act to amend the Supplemental Pension Plans Act

[Assented to 17 June 1994]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. R-15.1,
s. 36, am.

1. Section 36 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) is amended

(1) by striking out the words “or, where the plan provides that, despite such termination, the member continues to be a member for a given period, until the end of that period, which may in no case, notwithstanding the second paragraph of section 5, exceed 24 consecutive months” in the second, third, fourth and fifth lines of paragraph 2;

(2) by adding, at the end, the following paragraph:

Additional
period

“The plan may, however, provide that the member remains an active member for a given period after the end of his period of continuous employment. Notwithstanding the second paragraph of section 5, the said period, increased by any period of layoff with a right of recall referred to in section 54, shall not exceed 24 consecutive months.”

c. R-15.1,
s. 54, am.

2. Section 54 of the said Act is amended by adding, at the end of the first paragraph, the words “and periods of disability during which the member continues to accumulate benefits. A period of layoff with a right of recall shall not, for the purposes of this paragraph and notwithstanding the second paragraph of section 5, be considered to be a period of temporary interruption beyond 24 consecutive months, unless the plan so permits and the employee consents thereto”.

c. R-15.1,
s. 58, am.

3. Section 58 of the said Act is amended by adding, at the end, the following paragraphs:

Suspension
of payment

“A defined benefit plan or a defined contribution-defined benefit plan, however, may provide that payment of a pension may be suspended for a given period at the request of the member when the member is re-employed by the employer party to the plan or, in the case of a multi-employer plan, even a plan not considered to be a multi-employer plan pursuant to section 11, by one of the employers who are parties to the plan, subject to the following conditions:

(1) if the suspension begins before the first day of the month following the month during which the member attains 65 years of age or, in the case of a member who attains 65 years of age on the first day of a month, before that day, the member accumulates new benefits in respect of his work during the period of suspension preceding that day, in accordance with the terms and conditions provided under the plan for employees of his class, up to the maximum period of service that may be credited to him under the pension plan for the purpose of calculating the normal pension;

(2) if the pension suspended is a retirement pension reduced by reason of payment having begun before the normal retirement age, the reduction must be recalculated at the end of the suspension;

(3) if the suspension continues or begins after the day referred to in subparagraph 1, the pension of which payment was suspended shall be adjusted to take account of any recalculation of the reduction pursuant to subparagraph 2 and of any new accumulated benefits referred to in subparagraph 1. The adjustment formula shall be the same as that prescribed in the plan, pursuant to the second paragraph of section 79, for the amount of pension not paid during a postponement period.

Additional
pension

Furthermore, the additional pension resulting from the contributions paid during suspension of the pension shall be established in accordance with the rules set forth in section 78 for the calculation of the minimum value of the pension resulting from contributions paid during a postponement period.

Suspension

Suspension of the pension ends upon termination of the member's period of continuous employment or at the time established under paragraph 2 of section 80.”

c. R-15.1,
s. 60, am.

4. Section 60 of the said Act is amended by inserting the words “the third paragraph of section 58 or in” after the words “referred to in” in subparagraph 4 of the second paragraph.

c. R-15.1,
s. 82.1, added

5. The said Act is amended by inserting, after section 82, the following section:

Interruption

“82.1 Notwithstanding section 58, the plan may provide that payment of the disability pension is interrupted when the member ceases to be disabled within the meaning of the plan.

Value of benefits

The value of the benefits accumulated by the member in respect of service credited under the plan before payment of the disability pension begins shall not, at the time payment of the pension is interrupted, be less than the amount m calculated according to the following formula:

$$a \times \frac{b}{c} = m$$

where

“ a ” represents the value of the benefits accumulated by the member on the date on which payment of the disability pension begins, established regardless of the value of that pension;

“ b ” represents the value of a pension of \$1 paid annually beginning on the date on which payment of the disability pension is interrupted and on each anniversary date thereafter;

“ c ” represents the value of a pension of \$1 paid annually beginning on the date on which payment of the disability pension begins and on each anniversary date thereafter.

Values

Values are established on the date on which payment of the disability pension is interrupted, according to actuarial assumptions and methods identical to those transmitted to the Régie and used on that date to determine the value of the pension benefits to which section 60 applies.”

c. R-15.1,
s. 88,
replaced
Death

6. Section 88 of the said Act is replaced by the following section:

“88. Where a member whose pension was postponed dies during the postponement period, his spouse shall be entitled to a pension the value of which shall be equal to or greater than the higher of

(1) the value of the pension the spouse would have been entitled to receive pursuant to section 87 if payment of the postponed pension had begun on the day preceding the death of the member, unless the spouse has waived such pension; and

(2) the value of the death benefit the spouse would have been entitled to receive pursuant to section 86.

Partial post-
ponement

Where only part of the pension has been postponed, the spouse is entitled, in addition to the pension to which he is entitled pursuant to section 87 in respect of the partial pension the member was receiving, to a pension the value of which must be equal to or greater than the higher of the values described in the first paragraph, reduced by multiplying it by the fraction that the part of the postponed pension is of the total pension.

Partial post-
ponement

Where the member does not have a spouse, his assigns shall be entitled to the pension benefit referred to in section 86, reduced as provided in the second paragraph of this section in the case of partial postponement of the pension."

c. R-15.1,
s. 110.1,
added

7. The said Act is amended by inserting, after section 110, the following section:

Cost and
expenses

"110.1 The cost of producing the statement referred to in section 108 and the expenses incurred for effecting the transfer of benefits between spouses may be claimed from the spouses only up to the limit fixed by the Minister, after consultation with the Régie, and published in the *Gazette officielle du Québec*. The limit may vary according to the type of plan.

Cost and
expenses

The costs and expenses claimed from the spouses shall be divided equally between them, unless they decide to opt for another form of apportionment. Payment of the amount that must be borne by each spouse may be effected by the pension committee through a reduction of the value of the spouse's benefits, unless that spouse chooses another method of payment."

c. R-15.1,
s. 127, am.

8. Section 127 of the said Act is amended by adding, at the end, the words "or, in the case of a multi-employer plan, even a plan not considered to be a multi-employer plan pursuant to section 11, in respect of a period prior to the date of coming into force of an amendment to provide for the participation of a new employer. In the latter case, however, the unfunded liability must pertain only to the crediting of service to members who were employed by the new employer".

c. R-15.1,
s. 134, am.

9. Section 134 of the said Act is amended

(1) by inserting the words "or with an amount determined pursuant to subparagraph 3 of the second paragraph of section 137" after the word "liabilities" in the fourth line;

(2) by striking out the words and figures “subparagraphs 2 to 4 of the first paragraph and the second paragraph of” in the tenth and eleventh lines;

(3) by adding, at the end, the following paragraph:

Reduction
excluded

“However, where the degree of solvency of a pension plan is less than 100 %, no reduction authorized by the first paragraph may be made that would cause an amount payable to be determined pursuant to subparagraph 4 of the second paragraph of section 137 or to be higher than it would have been without the reduction.”

c. R-15.1,
s. 140,
French text,
am.

10. The French text of section 140 of the said Act is amended by replacing the words “d’amélioration” in the last line of the third paragraph by the words “de modification”.

c. R-15.1,
s. 154,
replaced

11. Section 154 of the said Act is replaced by the following section:

Accountabil-
ity

“**154.** The pension committee is accountable for the person to whom it has delegated powers if, among other things, it was not authorized to do so; if it was so authorized, it is accountable only for the care with which it selected the delegatee and gave him instructions.”

c. R-15.1,
s. 157, am.

12. Section 157 of the said Act is amended

(1) by inserting, before the first paragraph, the following paragraph:

Assets

“**157.** The assets of the plan may not serve to secure any obligations other than those of the plan. Only an immovable hypothec may encumber a plan’s assets and only to the extent determined by regulation or authorized pursuant to section 247.1.”;

(2) by striking out the second paragraph.

c. R-15.1,
s. 161, am.

13. Section 161 of the said Act is amended

(1) by inserting the words “and accompanied with the prescribed attestations, certificates and documents” after the word “regulation” in the third line of the first paragraph;

(2) by replacing the words “to the extent” in the fourth line of the second paragraph by the words “, except in the cases”.

c. R-15.1,
ss. 161.1,
161.2, added

14. The said Act is amended by inserting, after section 161, the following sections:

Reports **“161.1** The accountant shall submit reports to the pension committee in accordance with the mandate assigned to him.

Report The accountant shall also report to the pension committee any situation or operation, noted in the normal course of his mandate, which might adversely affect the financial interests of the pension fund and requires a correction.

Copy to the
Régie If the pension committee fails to take corrective measures without delay with regard to the situation or operation reported, the accountant shall send a copy of his report to the Régie.

Civil liability **“161.2** No accountant incurs any civil liability for making, in good faith, a report under the second paragraph of section 161.1.”

c. R-15.1,
s. 166, am. **15.** Section 166 of the said Act is amended by inserting, after the first paragraph, the following paragraph:

Agenda **“The subjects determined by regulation must, in addition, appear on the agenda of the meeting.”**

c. R-15.1,
s. 173, am. **16.** Section 173 of the said Act is amended

(1) by replacing what precedes paragraph 1 by the following:

Applicability **“173.** The 10 % limit does not apply to”;

(2) by replacing paragraph 3 by the following paragraph:

“(3) sums deposited, under the terms of a management contract, with an insurer authorized to carry on insurance business in Québec or elsewhere in Canada where an agreement under section 249 is applicable, subject to the following conditions:

(a) under the contract, the insurer guarantees the capital and a minimum rate of interest and the criteria applicable to the calculation of the maximum premium payable for the purchase of a pension are specified in the contract;

(b) in the case of a defined contribution plan, the insurer binds himself directly toward each member and any member to whom sums in excess of the coverage provided by the Canadian Life and Health Insurance Compensation Corporation are attributed has the right to transfer all or any part of the excess amount to such pension plan as he chooses among those referred to in the third paragraph of section 98;”;

(3) by adding, at the end, the following paragraph:

Transfer

“The right to a transfer under subparagraph *b* of subparagraph 3 of the first paragraph may be exercised for the first time by applying therefor within 180 days after transmission of the first statement under the first paragraph of section 112 showing that the sums attributed to the member exceed the coverage referred to in the said subparagraph, and every three years thereafter, within 180 days after the expiry of the third year. The sums transferred must be equal to or greater than the value at maturity of the investment made with that part of the excess amount the member is applying to have transferred, unless the transfer is made before the date of maturity at the member’s request, in which case the sums transferred may be equal only to the market value of the investment. Transfers shall be made free of charge unless a transfer charge, which may in no case exceed the charge for the transfer of the benefits of a member who ceases to be an active member, is stipulated in the contract.”

c. R-15.1,
s. 211, am.

17. Section 211 of the said Act is amended

(1) by replacing the words “total or partial termination of a pension plan” in the first and second lines of the first paragraph by the words “partial termination of a pension plan and every member affected by the total termination of a plan who was still active on the date of termination”;

(2) by inserting, after the first paragraph, the following paragraph:

Termination
of plan

“The same right is granted to every member affected by the total termination of the plan who ceased to be an active member during any period prior to the date of termination that is determined by the Régie, in circumstances which, in the opinion of the Régie, are similar to those mentioned in section 165.1. The decision of the Régie regarding the notice of termination of the plan or terminating the plan must specify the period so determined and the non-active members to whom the right is granted.”

c. R-15.1,
ss. 212, 213,
replaced

18. Sections 212 and 213 of the said Act are replaced by the following section:

Value of ben-
efits

“212. The value of the benefits of members or beneficiaries affected by the termination of a pension plan shall be determined in accordance with actuarial assumptions and methods identical to those which were sent to the Régie and which, on either of the following dates, were used to determine the value of the pension benefits to which section 60 applies and to which the members or beneficiaries were entitled on that date:

(1) on the date on which the member ceased to be an active member in case of partial termination of the plan or, in case of total termination, if the benefits whose value is to be determined are the benefits of the following members or beneficiaries:

(a) a member who ceased to be an active member prior to total termination and who, on the date of such termination, had already elected for payment of his benefits within the time limits set out in subparagraph 1 of the second paragraph of section 99 or in section 236, or who was still within the time limit to exercise such an election, and the beneficiaries whose benefits derive from service credited to such a member;

(b) a member to whom the second paragraph of section 211 applies;

(2) on the date of termination, if the benefits whose value is to be determined are the benefits of any other member or beneficiary affected by the total termination of the plan.

Applicability

The first paragraph does not apply to a pension that must be guaranteed by an insurer pursuant to section 237."

c. R-15.1,
s. 226,
French text,
am.

19. The French text of section 226 of the said Act is amended by replacing the words "d'amélioration" in the last line of the second paragraph by the words "de modification".

c. R-15.1,
s. 230.7, am.

20. Section 230.7 of the said Act is amended

(1) by inserting, after the third line of the first paragraph, the following case:

"– at least one member or beneficiary opposes the draft agreement submitted by the employer when the proposed method of apportionment, under the terms of the second paragraph of section 230.2, admits of no opposition;";

(2) by inserting, at the end of the fifth line of the first paragraph and after the figure "230.2", the words "or within the additional period granted by the Régie pursuant to the first paragraph of section 230.5";

(3) by replacing the figure "230.4" in the seventeenth line of the first paragraph by the figure "230.5".

c. R-15.1,
s. 240.1,
replaced

21. Section 240.1 of the said Act is replaced by the following section:

Surplus
assets

“240.1 The share of the surplus assets to which a member or beneficiary is entitled may be paid to him in a lump sum, transferred into a plan referred to in section 98 or used to purchase a pension or other pension benefit, according to the chosen option he indicates to the pension committee within 30 days after the pension committee sends him a notice setting out the various modes of payment, which notice must be sent within the time limit prescribed in section 205.1. The share may not, however, be used to purchase a pension the value of which exceeds the amount that, under a registered pension plan as defined in section 1 of the Taxation Act, may be transferred directly into another plan.

Payment

If the member or beneficiary fails to indicate which option he has chosen within the time limit prescribed in the first paragraph, payment shall be made to him according to the mode proposed by the pension committee in the notice.”

c. R-15.1,
s. 240.2, am.

22. Section 240.2 of the said Act is amended by adding, at the end, the following paragraphs:

Condition

“However, if the date of partial termination precedes the date of total termination of the plan by seven years or more, the members whose benefits have been paid shall retain their status as members for the said purpose only if they assert their rights with the pension committee within the prescribed time limits.

Notice

Whenever the provisions of the second paragraph must be applied, the notice required to be published under the second paragraph of section 230.4 must set out the rules established by this section. However, where a case has been referred to arbitration under section 230.7 without publication of the notice, the pension committee shall, upon being informed of the referral to arbitration, cause to be published in a newspaper circulated in the region of Québec where the greatest number of members who were active at the date of termination reside, a notice setting out the application for arbitration together with the rule established by this section, and informing interested parties that, until the matter is taken under advisement, they are entitled to assert their rights with the pension committee. A copy of the public notice must be sent without delay to the Régie.

Exemption

The Régie may, however, exempt the pension committee from the obligation to publish the notice if it is attested in writing that all members and beneficiaries who may be entitled to assert rights under the plan or under this Act have been notified personally.”

c. R-15.1,
s. 240.3, am.

23. Section 240.3 of the said Act is amended

(1) by replacing the words “, at the time of its total termination, had 15 members or less,” in the first and second lines of paragraph 1 by the words “is totally terminated”;

(2) by inserting the words “or pursuant to this Act” after the word “plan” in the fifth line of paragraph 1;

(3) by striking out the words “, other than a multi-employer plan,” in the first and second lines of paragraph 2;

(4) by replacing paragraph 3 by the following paragraph:

“(3) any multi-employer plan which is totally terminated may, on the conditions fixed by the Régie, be exempted from the application of all or some of the provisions of sections 220 to 227.”

c. R-15.1,
s. 244, am.

24. Section 244 of the said Act, amended by section 3 of chapter 45 of the statutes of 1993, is again amended

(1) by inserting, after subparagraph 8.1 of the first paragraph, the following subparagraphs:

“(8.2) prohibit that the assets of a pension plan be encumbered with an immovable hypothec or determine the maximum proportion of the book value of the assets of a plan that may be encumbered with an immovable hypothec;

“(8.3) determine the information that must be contained in the annual statement referred to in section 161 as well as the attestations, certificates and documents it must be accompanied with;

“(8.4) determine the cases in which the audit of the financial report referred to in section 161 is not required;

“(8.5) determine the subjects, other than those mentioned in the first paragraph of section 166, that must be placed on the agenda of the annual meeting;”;

(2) by inserting, after the first paragraph, the following paragraph:

Regulations

“A regulation made under subparagraph 8.2 or 9 may prescribe the cases in which and the types of plans to which it applies. It may also prescribe the conditions on which it applies to loans or investments existing on the date it comes into force.”

c. R-15.1,
s. 247.1,
added

25. The said Act is amended by inserting, after section 247, the following section:

Exception

“247.1 The Régie, on the conditions it fixes, may authorize a departure from the limits established by a regulation made under subparagraph 8.2 or, with respect to real estate investments, under subparagraph 9 of the first paragraph of section 244.”

c. R-15.1,
s. 294, am.

26. Section 294 of the said Act is amended by replacing the words “paragraph 2” by the words “subparagraph 2 of the first paragraph”, in the third line.

c. R-15.1,
s. 300.1,
added

27. The said Act is amended by inserting, after section 300, the following section:

Death

“300.1 If a member dies during the period in which all or part of his pension is postponed, the second paragraph of section 299 does not apply; however, the value of the benefit provided for in that paragraph shall, in determining the spouse’s benefits, be added to the value established under subparagraph 2 of the first paragraph of section 88 or, where there is no spouse, to the value of the benefit referred to in the third paragraph of that section.”

c. R-15.1,
s. 307, am.

28. The English text of section 307 of the said Act is amended by replacing the words “An additional period of 12 months” in the first line of the second paragraph by the words “Moreover, a period of 12 months from that date”.

c. R-15.1,
s. 307.1,
added

29. The said Act is amended by inserting, after section 307, the following section:

Applicable
provisions

“307.1 Subparagraph 3 of the first paragraph of section 173 and the second paragraph of that section apply to deposits made or to be made under a management contract as it read on 17 June 1994, only from the expiry of the term of the investment stipulated in the contract.

Right to
transfer

However, the right to a transfer which those provisions grant to a member applies to such deposits, but only if the sums deposited are attributed to that member; the charge that may be claimed by an insurer for such a transfer shall in no case exceed the charge for the transfer of the benefits of a member who ceases to be an active member.”

c. R-15.1,
s. 311.4,
replaced

30. The said Act is amended by replacing section 311.4 by the following section:

Share of sur-
plus assets

“311.4 A member or a beneficiary whose share of the surplus assets is established in a draft termination report or a supplement

thereto approved by the Régie before 17 June 1994 may avail himself of section 240.1 for as long as the pension committee has not paid his benefits in full.”

Computation

31. For the purpose of computing, in respect of a member laid off before 17 June 1994, the 24-month period provided for in the first paragraph of section 54 of the said Act, the time elapsed on that date shall be taken into account.

Coming into
force

32. This Act comes into force on 17 June 1994, except sections 7, 13 and 14 which will come into force on the date or dates fixed by the Government.