November 30, 2021

The Honourable Monte McNaughton
Minister of Labour, Training and Skills Development
400 University Avenue, 14th Floor
Toronto, ON M7A 1T7
Via email: Minister.MLTSD@ontario.ca

Re: Automatic Features in Capital Accumulation Plans

Dear Honourable Minister McNaughton:

We are writing further to our July 16, 2020 letter and August 10, 2019 discussion with the Ministry of Finance and asking you to consider modernizing the *Employment Standards Act, 2000* (ESA) and the *Pension Benefits Act* (PBA) to help more Ontarians save for a secure retirement. These changes would explicitly allow employers to deduct employee contributions from payroll automatically without a burdensome consent process. This would enable automatic enrolment and automatic escalation features in voluntary workplace capital accumulation plans (CAP) with employer matching contributions. CAPs include defined contribution (DC) registered pension plans, group registered retirement savings plans (GRRSPs), group deferred profit sharing plans (DPSPs) and group tax-free savings accounts (TFSAs). About 40% of employees across Canada do not take full advantage of the retirement savings potential in these plans, leaving as much as $3 billion on the table annually in free company matching money.

As affirmed recently through the Financial Service Regulatory Authority's (FSRA's) Guidance on automatic features, we acknowledge that the PBA does not prohibit employers from implementing automatic features for new hires. However, employers must adopt non-standard, labour-intensive, and costly processes to do so. Moreover, due to ESA requirements, there remain concerns about implementing automatic features for existing employees who were hired under different terms. This impacts the ability of an employer to modify its savings and retirement plan design to improve the retirement readiness of all members.

ACPM is the leading advocacy organization for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent retirement plan sponsors, administrators and trustees and our membership represents retirement income plans that cover millions of plan members.

Thank you for the opportunity to provide you with additional information on this important topic.

During our meetings, one or both of your representatives expressed interest in receiving more information on several issues. Below please find our comments.

Employer Interest in Automatic Features

We understand through Sun Life that many major Ontario employers have written letters to the Ontario Government voicing their support for enabling automatic features. Together, these organizations employ over 46,000 people in Canada. The majority of these employees are located in offices across Ontario.

In addition, surveys of Ontario plan sponsors demonstrate a great deal of interest in implementing automatic features in workplace pension and savings plans. Below, we present highlights of two surveys conducted by ACPM and by Sun Life, who was kind enough to share its results with us.

<u>ACPM Survey Results</u>

ACPM conducted a survey in 2021 of its plan sponsors and administrators across the country. It received 55 responses, the majority of whom were from the private sector. Of note:

- **A sound majority of employers support automatic features** – Just under half of respondents had implemented either auto-enrolment or auto-escalation. Of those who do not have these features, about 14% would support them.

- **A high majority of respondents stated that the intended goals of auto-features were being achieved** – Of those who had one or both features, the majority of respondents selected “desire to improve member retirement outcomes” as the primary reason for using automatic features.

- Leading reasons for not wanting automatic features included:

    - “not requested or wanted by plan members”; and
    - “requires renegotiation of employment contracts or collective agreements”.

<u>Sun Life Survey Results</u>

In August 2020, Sun Life surveyed 78 Ontario plan sponsors across all sectors on their views of automatic features in CAPs. It has agreed to share its survey results for inclusion in this letter.

The survey responses demonstrated great support for auto-enrolment and auto-escalation. The sponsors with the largest representation included Consumer products/services, Industrial products/services, Pharma, Technology, Financial and Health care. Other industries included in the survey included Agriculture, Charities, Education, Transport/logistics, Real Estate, Communications, Insurance, Legal and Infrastructure.

Of note:

- 100% feel that auto-enrolment would result in better outcomes, such as higher participation and savings rates for employees.
- 65% would add an auto-enrolment feature to their plans for new employees. 29% would consider doing so if the Ontario government introduced the necessary legislation.
- 64% would add an auto-enrolment feature to their plans for non-participating employees and another 25% would consider doing so.
- 90% agree that automatic contribution increases are an effective way to increase employee savings and improve retirement readiness.
- 42% would make automatic contribution escalation available to their employees and another 51% would consider doing so.

Case Studies

Auto-Enrolment

The chart below provides an overview of Sun Life clients that have incorporated auto-enrolment into their voluntary workplace savings or pension plan. These employers have embedded auto-enrolment into their job offer letter using plain language and behavioral economics. The letter essentially informs the employee that by accepting the job, they will be automatically enrolled in their workplace plan at a defined savings rate. The employee can opt out (or change the starter savings rate) at any time. Instructions are provided on how to do so. None of the new hires expressed any complaints with this approach.

Client	New hire results using traditional opt in methods	New hire results since implementing auto-enrolment
Large Financial Institution	• Participation rate = 79% early 2020; was 72% in 2015 • 11% of those participating did not take advantage of full employer match	• Participation rate = 95.4% • New hires defaulted to savings rate to receive full employer match. Only 7% of employees chose to reduce starter rate
Large Construction Company	• Participation rate = 57% • Average employee savings rate = 3%	• Participation rate = 98% • Average employee savings rate = 5%
Large Mining Company	• Participation rate = 62% • 44% of those participating did not take advantage of full employer match	• Participation rate = 97% • New hires defaulted to savings rate to receive full employer match. Only 7% of employees chose to reduce starter rate
Large Pharmaceutical Company	• Participation rate = approx. 60%	• Participation rate = 97%
Large Property & Casualty Insurance Company	• Participation rate = approx. 89% (with a lot of personalized pushing by the HR team)	• Participation rate = 98%
Mid-sized Software Company	• New plan; nothing in place previously	• Participation rate = 96% (4% opted out by changing savings rate to 0%) • All employees automatically enrolled at 4% contribution rate (60% increased to 4.5%)

We note that the mining company example above included some groups of unionized employees. Communication with the union helped it to understand the benefits to its members, who are hourly workers with very low participation in the optional contribution features.

Case study: Auto-Enrolment and Auto-Escalation

This case study of a Willis Towers Watson client involves a BC employer with a DC plan that had replaced a non-contributory defined benefit pension plan. Initially, the DC plan was designed with an employer contribution of 7%, and without required or matched employee contributions. Under this design, only 15% of employees remitted voluntary contributions to the GRRSP. By 2016, retirement readiness was poor: only 22% of employees were projected to be able to retire by age 71, causing some employees to delay their retirements, creating human resource issues.

This company decided it needed to address its employees' retirement readiness. Its new plan design introduced a new matching program (a 50% employer match of employee contributions, up to an additional 2% company contribution), with auto-escalation to the full 4% employee matching contribution.

One year after implementing the new design:

- Retirement readiness had improved by three years; the expected average age at which members would be able to retire with the same disposable income dropped from 74 to 71.

- 94% of employees kept their contributions at the full 4%.

- Feedback from employees was very positive.

Pooled Retirement Pension Plan (PRPP) Experience

It has been suggested that the PRPP offers a route to use automatic features. We do not agree that this is a solution for the large number of employees covered under existing plans offered by their employers.

Many employers already have existing pension plans, often with a DC component combined in a single plan with a DB component, and it may not be practical or desirable to introduce an entirely separate plan. PRPPs do not offer an appealing path for larger employers with existing plans who wish to have more control over and customization of their retirement programs to suit their employee populations (and are prepared to take on the fiduciary obligations that go along with administering a registered pension plan). Employers with existing, well-established group RRSPs (and increasingly, TFSAs) who are comfortable with any associated fiduciary obligations, also may not wish to disrupt their savings arrangements simply in order to switch to an entirely different product. In addition, the following features of PRPPs may limit the effectiveness and desirability of the automatic features built into the PRPP legislation:

- Employers are responsible for collecting opt-outs and then communicating to the administrator. The third-party administrator is not able to assist with managing the opt-out process.

- The employer is required to wait for a period of time before remitting contributions. Contributions are not remitted from the first pay.

- Opting out of the plan is a separate process from setting the contribution rate to 0%.

- Rules around when a member can change their contribution rate to 0% are complicated. For example, the rate can only be set to 0% after an employee has contributed to the plan for 12 months and only for a period of 3 to 60 months. Notice must be provided 90 days before contributions are re-instated.

When automatic features are implemented in DC pension plans, they are not typically implemented with such constraints.

Interaction between the ESA and Ontario Human Rights Commission (OHRC) on the age discrimination issue

In respect to whether there could be age discrimination issues associated with automatic features, an opinion on the legal validity of using age and service factors for auto-escalation is beyond the scope of ACPM's mandate as an organization. However, we can provide some general comments.

We do not see any serious human rights risks associated with auto-escalation. There are DC plans now in existence that have implemented escalated contribution formulas for their members without challenge. These formulas are typically service-based or based on age and service combined, not solely age-based.

Jurisprudence has generally held that service-based criteria for benefits do not contravene human rights laws, and age and service criteria have also withstood challenge. In addition, courts, including the Supreme Court of Canada, have acknowledged that not every differentiation in treatment constitutes "discrimination" within the meaning of human rights legislation.

As a result, decision makers have accepted that it is not always discriminatory to provide different categories or levels of benefits to employees, particularly employees at the end of their careers, based on factors such as the purpose and function of the benefit in question, the position of those seeking the benefit within society and the effect that providing or not providing the benefit will have on intended beneficiaries or those seeking the benefit.

In fact, it is possible that increasing contributions at older ages or higher service levels might in fact be more substantively equal if the cost of retirement income increases as employees age.

We would observe that it is not necessary for the government to resolve this question in order to permit such features. The legislation simply needs to make it clear the auto-enrolment or increase to contributions does not violate the ESA. It would continue to be up to employers designing their retirement plans to avoid creating provisions that violate the Human Rights Code.

Regulatory Guidance

We note that the Financial Services Regulatory Authority (FSRA) recently issued guidance[1] expressing a supportive view of automatic features as having the potential to improve retirement outcomes in DC pension plans. It notes, however, that plan sponsors should obtain legal advice about the impact of the ESA on the use of such features.

In addition, facilitating use of such features will provide plan sponsors with additional tools to increase member engagement and focus decision-making on retirement outcomes, the two key recommendations resulting from the recent work of the Joint FSRA and OSFI Technical Advisory Committee on Defined Contribution Plans.[2]

---

[1] https://www.fsrao.ca/industry/pensions/regulatory-framework/guidance-pensions/automatic-features-defined-contribution-pension-plans

[2] https://www.fsrao.ca/industry/auto-insurance/regulatory-framework/advisory-committees/technical-advisory-committee-transforming-auto-insurance-rate-regulation/working-towards-harmonization-recommendations-strengthening-cap-guidelines-joint-osfi-and-fsra-technical-advisory

Action

With planning for the Spring budget likely underway, ACPM urges your respective ministries to commit to modifying the ESA (and the PBA to add clarity) to clearly permit and facilitate the inclusion of automatic features in CAPs.

We would be pleased to meet with you to discuss this information.

Yours sincerely,

R Marrero

Ric Marrero
Chief Executive Officer
ACPM

cc: Alex Killoch, Director, Pension Policy Branch, Ontario Ministry of Finance