

Pension Commission

Update #27 Common-Law Partners

Revised August 2004

Reference: *The Pension Benefits Act, Sections 1(1), 1(3) 21(4)(c)(d); 21(13)(b); 21(13.1); 21(26)(a)(b); 21(27); 23(1)-(6); 24; 31(2), 37(t), Regulation, (196/01), Sections 1; 11(2); 18.1(3)(a)-(c), 18.1(6), 18.1(15)(b)(d)(e)(f)(g)(h)(i) (p), 18.2(14), 23(8)(a)-(c), 24(1), 24(3), 24(3.1), 24(6), 24.1(3)(a), 26.1(c), 27, 40(2)*

Chapter 37, an Act to comply with the Supreme Court Decision in *M. v. H.* received Royal Assent on July 6, 2001 and is effective January 1, 2002. Chapter 37 amended Manitoba legislation, including *The Pension Benefits Act (Act)*, to extend spousal obligations and benefits to same-sex partners to comply with the Supreme Court decision in *M.v.H.*

Pension plans should be amended as soon as possible to reflect the amended provisions of the Act, and where a plan has not been so amended, the plan is deemed to include the required provision and the plan administrator should act accordingly.

The relevant provisions of the Act impacted by Chapter 37 are outlined as follows:

Definitions:

The Act as updated at June 30, 2004, defines "common-law partner" as:

"common-law partner" of a member or former member means

- a. a person who, with the member or former member, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, or
- b. a person who, not being married to a the member or former member, cohabited with him or her in a conjugal relationship
 - i. for a period of at least three years, if either of them is married, or
 - ii. for a period of at least one year, if neither of them is married;

"Common-law relationship" means the relationship between two persons who are common-law partners of each other.

Death of Member – Section 21(26)

On pre-retirement death of a married member, or a member with a common-law partner, the surviving spouse or partner, as the case may be, is entitled to the benefit in the form and amount set out in subsection 21(26) of the Act.

A common-law partner shall be considered to have survived a member or former member with whom he or she had a common-law relationship only if they were cohabiting with each other immediately before the death of the member or former member.

If the member did not have a spouse or common-law partner at the time of their death, benefits shall be provided by way of a payment to the designated beneficiary or estate.

Joint and Survivor Pension - Section 23

The pension payable to a married member or a member with a common-law partner shall be in the form of a joint pension reducing to not less than 2/3rds on the death of either the member, the spouse or partner, as the case may be.

A common-law partner is entitled to receive a benefit under this section of the Act in respect of a joint pension with the member, provided the member and the partner cohabited with each other.

However, if the member and the spouse or common-law partner, as the case may be, both agree, a Pension Waiver Form may be completed by them jointly, allowing the member to choose an alternate form of pension payment as permitted by the plan.

Division of Pension Benefits on Break-up – Section 31(2)

As with married spouses, an equal division of pension credits accumulated by one or both common-law partners during the period of a common-law relationship will occur in the event of the break-up on or after January 1, 1984 of a common-law relationship. Once a written agreement exists regarding the division of property, the pension credits must be divided on an equal basis.

The pension benefit credits or payments due that are subject to an equal division are those that accrued

- in the case of a common-law relationship, from the first day of the period in which the parties cohabited with each other in conjugal relationship and which continued until they became common-law partners, or
- in the the case of marriage, from the date of marriage or, if there was a period in which the parties cohabited with each other in a conjugal relationship and which continued until they were married, from the first day of that period,

until the date that the parties began living separate and apart.

For spouses who began living separate and apart before June 30, 2004, the pension benefit credit or payments due subject to division are those from the date of marriage.

LIRA, LIF and LRIF Contracts

LIRA/LIF/LRIF contracts should be amended as soon as possible to reflect the amended provisions of the Act, and where the contract has not been so amended, the contract is deemed to include the required provision and the financial institution should act accordingly.

The amended prescribed forms are available on our web site or by contacting the Pension Commission.

This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.