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AT A GLANCE ...

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employee benefits specialists

"It's time for a national pension reform summit"

Canada needs to hold a summit on pension reform, says retired Ontario Teachers' Pension Plan Chief Executive Claude Lamoureux.

In a speech to the Economic Club of Toronto in June, Mr. Lamoureux urged federal Finance Minister Jim Flaherty to call a summit of the four provincial and federal financial ministers in Canada that have responsibility for pensions to develop a national agenda for pension reform.

"One-third of working Canadians have no retirement savings at all," Mr. Lamoureux said. *"A good many of the other two-thirds are not saving enough to fund an independent retirement."*

Particularly worrisome is the decline of defined benefit pension plans that *"provide greater predictability to plan members, help attract and retain employees for plan sponsors and deliver better investment returns"* Mr. Lamoureux said.

"Despite their many advantages as retirement savings vehicles for Canadians, defined benefit plans continue to decline while governments stand by watching them disappear," the former Teachers' Pension Plan head warned. *"I am deeply concerned that, eventually, Canadians will no longer have access to them. This would be a terrible loss of an attractive, efficient and reliable retirement savings vehicle and an important pillar of Canada's pension system."*

The combination of erratic equity markets and low interest rates has undermined the fund values of many leading pension plans, forcing many plan sponsors to wind-up, underfund, or convert their plans to other arrangements such as group registered retirement savings plans.

To address the problem, the former pension executive went on to endorse three pension reform proposals published recently by the Canadian Institute of Actuaries. They include the following:

1. Allowing the establishment of pension security trusts that can be fully funded by a plan sponsor. Contributions to the trust would be separate from regular pension plan funds. Any surpluses not required to meet pension commitments could be returned to the plan sponsor.

2. Passing legislation requiring defined benefit plans to set and meet specific solvency targets. Plan sponsors could only take contribution holidays when plan surpluses exceed their target.

3. Allowing plan surpluses to exceed the current limit of 10 per cent of fund values.

"While there are no quick fixes for Canada's pension system, clearly it's time for governments to act decisively and start working together to bring about much needed reforms," he concluded. *"A national pension reform summit is the first step along this road…"* ❧

Patent drug law changes could result in higher drug prices

Benefit plan sponsors and members should expect to pay more for prescription drugs, if proposed changes to Canada's patent drug rules become law, generic drug producers say.

Based on revisions to the federal Patented Medicines Regulations of Canada Act introduced this past April, brand name pharmaceutical manufacturers will be allowed to register patents with ingredients that are irrelevant to their products to prevent or delay the production of generic versions of their medications. Such patents often involve the adding a harmless ingredient to the brand name drug's formula, thereby extending the patent protection of the original brand name drug. The new patents would prevent generic producers from using similar processes to produce lower priced generic drugs.

According to the Canadian Generic Pharmaceutical Association (CGPA), the proposed amendments to the patent medicines regulations would override a Supreme Court of Canada decision of November 2006 that prevented the re-patenting process, also known as *"evergreening"*, by brand name drug manufacturers.

If passed by Parliament, the new regulations could extend brand name drug producers' patent monopolies for years, driving up prescription drug prices.

"Changes to stop evergreening came after years of study and calls for change from the Supreme Court of Canada, the Romanow Commission, the Competition Bureau, health care groups, unions and employers that sponsor drug plans for their employees," says CGPA President Jim Keon. *"Now, the government is proposing to override a Supreme Court decision without prior consultation with the generic pharmaceutical industry or anyone in Canada who will have to pay higher prices for prescription drugs."*

The brand name pharmaceutical producers counter that the proposed amendment merely protects their sizeable investments in pharmaceutical research and development and prevents generic competitors from benefiting from that work.

According to the Canadian Generic Pharmaceutical Association, generic drugs account for 49 per cent of all prescriptions written in Canada and only 21 per cent of prescription drug costs. ❧

Provinces consider letting pharmacists prescribe drugs

Ontario may soon join Alberta and New Brunswick in allowing pharmacists, nurse practitioners and others to issue drug prescriptions.

Ontario Health Minister George Smitherman says he will commission a study on who should be allowed to prescribe drugs. While nurse practitioners can prescribe some medications in limited circumstances, the province will consider widening the scope of their prescribing power, he says.

Allowing more non-physicians to prescribe medications will ease pressures on doctors and allow more patients to receive wider arrays of medications more quickly, Mr. Smitherman suggests.

The proposal has been opposed by the Canadian Medical Association, which asserts that the plan could endanger patients since pharmacists and others aren't trained to diagnose illnesses and prescribe medicines.

"Today's pharmacy training doesn't prepare graduates for the responsibility of patient examination and diagnosis," says Brian Day of the Canadian Medical Association. *"A patient complaining of stomach pain could be given an over-the-counter medication when they are actually suffering from a burst appendix."*

However, groups like the Canadian Pharmacists' Association counter that their members already diagnose and recommend medications for routine sicknesses such as colds, coughs and diarrhea.

"Pharmacists could help patients manage chronic illnesses and save them trips to the hospital," argues the Canadian Pharmacists' Association's Jeff Poston. *"We're going to begin to see some real benefits for patients from pharmacists and other health care professionals having some increased authority to prescribe drugs."*

In 2007, Alberta became the first province to allow pharmacists to give vaccinations and refill or write prescriptions without a doctor's consent. New Brunswick introduced similar legislation earlier this year. Meanwhile, Manitoba is considering allowing pharmacists to order and interpret medical tests in addition to prescribing drugs. ❧

Saskatchewan changes children's and seniors' drug coverage

Saskatchewan will introduce major changes to its government drug programs, beginning July 1, 2008.

Effective that date, the province will unveil its Children's Drug Plan, for all children under the age of 14. Under the program, families will pay $15, including dispensing fees, for any prescription issued to a child under the age of 14, provided the medication is listed on the provincial drug formulary.

Coverage is automatic; parents will not have to apply to enrol their children in the plan and no proof of identity is required to prove eligibility under the plan.

The Saskatchewan plan does not cover children who are already covered by federal government-sponsored programs. As well, those receiving free drug coverage under the province's Supplementary Health, Family Health Benefits, Saskatchewan Aids to Independent Living or Palliative Care programs will continue to do so.

Also changing on July 1st is the province's Senior's Drug Plan. On that date, residents over the age of 65 will no longer be covered automatically under that drug care program. Instead, seniors will now have to apply to be covered under the plan at least two months prior to their 65th birthday. As well, to be covered, recipients must have reported earnings of less than $64,044 on their 2006 income tax return. Existing plan members must also re-apply to be covered under the plan and meet the maximum earnings requirement.

Like the Children's Drug Plan, the Senior's Drug Plan restricts prescription drug charges to $15 per prescription, including dispensing fees.

For more information on both plans see www.health.gov.sk.ca. ❧

Benefits beyond age 65

The ending of mandatory retirement at age 65 continues to be a challenging issue in the workplace. While most plan sponsors and members accept the concept in principle, many benefit plans and group insurance contracts terminate at age 65.

The result: some employees or members could suddenly find themselves with no group benefits, despite making the commitment to remain on the job after their 65th birthday.

Individual benefit coverage can help tackle this problem.

Through its Individual Financial Services department, Coughlin & Associates Ltd. offers health, dental and life insurance coverage to members who lose their benefits after turning age 65.

The individual health and dental plan features *guaranteed acceptance, provided the employee/member applies within 60 days of his/her last day of group coverage.*

Also available is a guaranteed acceptance individual life insurance policy with coverage available in amounts ranging from $25,000 to a maximum of $200,000.

Again, if you apply within 60 days of your group insurance ending, no medical questionnaire or exam is required for either of these two products.

Premiums can be paid by either the individual employee/member or by the plan sponsor and are eligible for tax deductions under certain conditions.

For further information, contact Coughlin's Individual Financial Services department at 613-231-2266 ext. 251 or jmoulton@coughlin.ca ❧

LTD benefits can be a legal minefield at termination

While Donald Trump made the term *"You're fired"* into popular entertainment, the involuntary termination of employees can be fraught with uncertainty, especially when employee benefits become part of severance arrangements.

In an era when employees and members are more aware of labour laws and more open to using the courts to enforce severance arrangements, the chances of poorly planned terminations ending up in litigation are increasing.

One area especially open to dispute during firings is long-term disability (LTD). While it can be relatively easy to set fixed termination dates for group life insurance and extended health benefits, LTD presents a unique challenge. If the plan sponsor continues to offer LTD coverage during the individual's notice of termination period and the employee/member becomes disabled, the benefit plan could end up paying LTD benefits for months, even years, after the person's termination date.

However, *excluding* previously provided LTD coverage from final settlements could potentially be even more costly to plan sponsors. The following rulings from the Supreme Court of Canada and the Ontario Court of Appeals highlight this problem:

Case #1. The high tech worker

In an August 3, 2006 decision, the Supreme Court denied an employer's petition of an Ontario Court of Appeal decision involving a woman who was terminated by a high tech company in July 2002, after 21 months of employment.

She was given 12 weeks of statutory notice with benefits, including LTD, which expired on September 25, 2002. However, on October 1, 2002, she became ill and was disabled for almost one year. She then began proceedings against the employer.

In its original decision, the Ontario Superior Court extended the employer's notice of termination period from 12 weeks to nine months, thereby entitling her to claim and receive full disability benefits. The employer then appealed the case.

In its later review, the Ontario Court of Appeals agreed with the employer that the woman was not entitled to receive both nine months' notice and the disability benefits. However, it still sided with the employee, stating that the woman's benefits coverage was *"wrongfully discontinued by the employer"* and that *"the employer must be liable for the value of the disability benefits that would otherwise have been payable"*.

It ultimately awarded the woman full salary for three months after termination, short-term disability benefits for the following four months and LTD benefits for the next eight months. It also awarded money to cover her tax liability for the LTD benefits.

While the employer tried to appeal to the Supreme Court of Canada, the country's highest court ultimately supported the Appeals Court decision and refused to hear the case.

Writing in the February 2006 edition of *CCH Canadian Ltd.* magazine, Christina Hall of Fraser Milner Casgrain suggests: *"As a result of the Court of Appeal's decision, employers who fail to maintain disability coverage for the employees during the full period of reasonable notice will be deemed to step into the shoes of the insurer and effectively become the insurer. In the most extreme example, it is possible that an employer could find itself paying disability payments to a terminated employee until the employee turns age 65, that is, if he or she never recovered from the disability."*

She cautions that plan sponsors should be especially aware of potential legal liabilities if they know that a terminated employee has health issues that could potentially turn into total disability.

"...Employers must bear in mind that in the case of terminations, well-drafted and executive minutes of settlement and full and final releases are likely sufficient to avoid liability. That said, employers should be aware that they may have to increase the amount which they are prepared to pay to the departing employee by way of settlement in consideration for the employee giving up his or her right to pursue a claim for disability benefits during the reasonable notice period. In fact, plaintiff's counsel may demand an increased payment in exchange for this release..."

Case #2. The steel company worker

In a similar case, an employee of a major steel manufacturer was terminated after 17 years of service after she returned to work following a five-month disability.

While she was provided with a nine-months of pay in lieu of notice, the plan sponsor discontinued benefits at termination. The woman again became totally disabled after termination. The employee sued the company for wrongful termination, alleging that the termination occurred without her receiving *working notice,* thereby disqualifying her from claiming LTD benefits.

Ultimately, the Ontario Superior Court sided with the employee stating: *"a contract of indefinite hire can be legally terminated only by the provision of reasonable working notice. In the absence of working notice, the Court's view was the contract is breached."*

Writing in the February 6, 2006 edition of the *Employment Law Dispatch,* Barbara G. Humphrey of the Stringer, Brisbane, Humphrey law firm notes that: *"At law, employers do not have the option of legally terminating an employment contract either by working notice or pay in lieu, unless contractually agreed to. In effect, when an employer terminates the employment relationship without working notice, the employer has breached the contract and is exposed to an assessment of any and all damages that flow..."*

When it comes to LTD coverage, that could mean that, if an employee had that benefit during employment, he/she is entitled to continue to receive that coverage during his/her notice of termination period. Eliminating the working notice period altogether only opens the door to the plan sponsor being *fully liable* for the LTD benefit.

On the same case, an article entitled *"Here's why we tell you to continue LTD after termination...",* the Rubin Tomlinson law firm writes in their *Employers' Alert* publication, that: *"Employers who discontinue disability benefits during the notice period run the risk of being placed in the shoes of their insurers if a dismissed employee becomes disabled during this period. Ideally, if an employee has not agreed to a severance package and signed a release, disability benefits should, if at all possible, be continued to minimize legal liability...."*

The firm goes on to recommend providing affected employees with an alternative arrangement, such as a lump sum, if LTD coverage cannot be found.

"At a minimum, consider offering the employee a lump sum of money designated for the purpose of allowing the employee to source their own replacement disability coverage. If the employee takes no steps in this regard, it might be possible to argue that the employee has not taken reasonable steps to mitigate his or her losses flowing from the dismissal."

Extra caution should be used with terminated employees who have higher than normal risks of disability, Rubin Tomlinson warns.

"If you are aware that the employee has health issues or is at higher risk of becoming disabled during the notice period, extra care should be taken to minimize risk and protect the employee."

The moral for plan sponsors: Don't assume your obligations to provide LTD coverage end at termination. If you are planning to terminate an employee or member, be sure to give careful consideration to the positive benefits — and potential liabilities — of continuing his/her LTD benefits during the notice of termination period. ❧

Cancer claimants' return-to-work rates rising

Cancer continues to be a source of both good news and bad news for long-term disability claims.

While incidents of cancer have increased 400 per cent over 30 years, according to the American Cancer Society, survival rates have also improved.

According to Unum Life Insurance, a large US-based disability insurer, cancer now accounts for more than 12 per cent of its long-term disability claims, making the disease one of the leading causes of disability.

The good news, according to Unum, is that return-to-work rates for cancer victims on short-term disability have jumped by 77 per cent since 2001. For those on long-term disability, the improvement is a less buoyant but still strong 24 per cent from that time.

While American-based, the Unum disability data involves more 25 million covered individuals and 178,000 employers and is likely applicable to Canada.

"Survivorship rates have moved to levels that are more characteristic of a serious chronic disease than a terminal illness," says Unum Vice-President of Health and Productivity Kenneth Mitchell. *"There are clear patterns of factors leading to return-to-work success, including early identification, age and work-site flexibility."* ❧

Pay for performance comes to LTD treatments

A group of plan sponsors in Minnesota have devised a unique way of reducing the number of long-term disability (LTD) claimants with depression: pay bonuses to doctors who report improvements in their patients' mental health.

Using the "pay for performance" principle, the new program pays doctors $25 to $100 for each patient that reports a significant decline in the symptoms of depression within six to 12 months of the start of treatment.

Under the program, patients must complete a nine-point question on the symptoms of their illness every six months. Responses are then graded against a point scale. Bonuses are awarded to doctors when a patient's score reaches a targeted level. The greater the improvement in the score, the bigger the bonus the doctor will receive.

The program will begin in 2009. Already, well-known Minnesota-based organizations such as the 3M Company, Honeywell and Target Corporation have joined the plan.

Critics of the scheme warn that patient health could be compromised, as doctors will focus their attention on patients whose symptoms are easiest to treat.

However, the Buyers Health Care Action Group, the project sponsor, counters that the plan simply gauges the effectiveness of medical treatment and pays doctors who produce superior results.

"If they're providing high-quality care to their patients, then they get a bonus. What's wrong with that?" says Buyers Executive Director Carolyn Price.

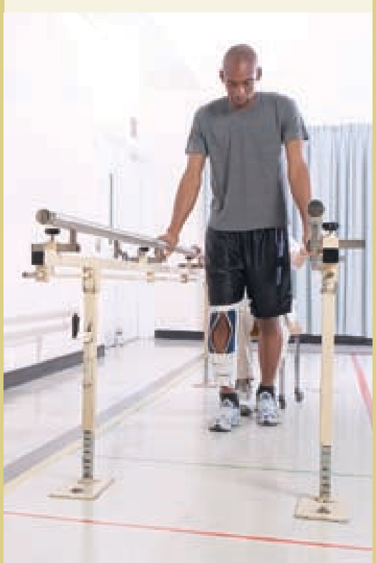
Depression is a leading cause of LTD claims. ❧

BC funds return-to-work programs

The government of British Columbia has donated $1 million to the National Institute of Disability Management and Research to help employers develop return-to-work and other disability management programs.

The Institute plans to use the funds to help employers with limited or no disability management programs to audit their long-term disability (LTD) assessment and management practices and adopt better practices to help LTD recipients return to work.

Only 45 per cent of British Columbians with disabilities participate in the workforce, says BC Minister of Employment and Income Assistance Claude Richmond. ❧



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Fast facts

- Data published by the research publication *Obesity* suggests that a 20-year-old who is 30 or more pounds overweight can expect to pay $5,000 to $22,000 more in medical bills over his/her lifetime. More than one-third of Americans and 25 per cent of Canadians are considered obese.
- The average hourly wage in the United States has jumped to $28.46, compared to $24.95 four years ago. Benefits, including extended health, life and disability insurance, holidays, government programs and other benefits account for 30.3 per cent of that cost.
- How do you keep seniors in the workplace? According to a survey of workers age 55 and over conducted by RBC Financial, competitive extended health care benefits were sited by 60 per cent of respondents. Flexible working hours, a guaranteed wage/salary, and phased retirement followed. More than two million Canadian workers are between the ages of 55 and 64, according to Statistics Canada, a 43 per cent increase since 2001.
- The Canadian Institute for Health Information reports that total spending on drugs in Canada reached $26.9 billion in 2007, a 7.2 per cent increase from 2006.
- Three quarters of employers say their employees are confused about the investment options available to them in their registered pension plans, group RRSPs and other retirement savings programs, according to an article published by *Benefits Canada* magazine. Too many investment choices and not enough employee education on investments are the main reasons for the confusion, the publication reports.
- A CROP survey of Quebec workers suggests that 38 per cent plan to retire before age 60. In total, 61 per cent plan to retire between the ages of 55 and 64. Over half of those surveyed, 53 per cent, say they hope to phase into retirement. Only 41 per cent plan to make a clean break into retirement at the end of their careers.
- The basic Old Age Security benefit will increase to $505.83 per month on July 1st.

PPN update

The **Upper Canada Drug Store**, at 139 Main Street in Morrisburg, has joined the Coughlin & Associates Ltd. preferred provider network (PPN) of pharmacies. Their phone number is 613-543-3535.

The **Pharma Plus Pharmacy**, 700 March Road in Kanata, is no longer a member of the Coughlin PPN.

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