

Amendments to the Cayman Islands National Pensions Law - what employers and employees need to know

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| Introduction

The following is a review of the National Pensions (Amendment) Law, 2016 (the **Law**) which amends the National Pensions Law (2012 Revision). The principal Law came into force on the 31st day of December 2016, however implementation of various sections have been staggered throughout 2017. Full details of the implementation schedule can be found in the National Pensions (Amendment) Law, 2016 (Commencement) Order, 2016.

The Law governs the private-sector pension regime; the public sector is governed by separate legislation. This review will focus mainly amendments affecting the employer and employee, however there are significant changes for Pension Administrators not covered in this review.

Headline changes

Changes to employers' mandatory-contribution obligations

To understand the changes to the Law in respect of mandatory contributions, one should note the following aspects of the Law following the amendments: with certain exceptions, every employee between the age of 18 years and the normal age of pension entitlement must be a member of a pension plan (see s.25(1)); and an employer must contribute to a pension plan not less than 5% of the employee's earnings up to the year's maximum pensionable earnings for that employee (see s. 47(3) (b)), while the employee must contribute the difference (if any) between 10% and the percentage contributed by the employer (see s. 47(3) (a), (c)).

The following changes to the Law will impact on an employer's mandatory-contribution obligations:

- First, the maximum amount of money that a person earns per year that is subject to mandatory contributions will increase from CI \$60,000 to CI \$87,000; this amount may be varied by Order, made by Cabinet – see definition of “year’s maximum pensionable earnings” and s. 47(1), (3).
- Second, the retirement age has been increased from 60 to 65 years – see definition of “normal age of pension entitlement” and s. 25(1).
- Third, the Bill reduces from nine months to six months the period from which an employer is required to commence making pension contributions for a work-permit employee – see s.25(2) (a). It remains the case that an employer must make contributions on behalf of a Caymanian employee as soon as that employee commences employment. The Bill continues to exclude domestic workers from the operation of the Law – see new definition of “household domestic” and ss. 25(2) (b) & 87(10).
- Fourth, s.48 states that employers must remit to employees’ pension plans on or before the 15th day of the month next following any month in which the employee performs services for the employer, for which the employee receives or expects to receive remuneration, regardless of the employee’s established pay period, and this date shall be known as the “contribution date deadline.” There is a defined process with established timelines after which the names of the employers who have not made the requisite contributions can be published and action taken to recover the delinquent contributions.

Change to encourage members’ voluntary contributions

A new s.47(10) allows members to access their additional voluntary contributions (i.e. contributions above the 10% mandatory contributions) prior to attaining their “normal age of pension entitlement” (as defined) for the following purposes:

- for medical purposes where health insurance is inadequate;
- for temporary unemployment of up to six months;
- for housing purposes, including constructing or buying a house or paying a mortgage, but not for rent or similar purposes;
- for any educational purposes

Changes to improve compliance

The Law establishes the Department of Labour and Pensions and repeals the Office of the Superintendent of Pensions. This measure is designed to align the Law with the re-organisation of labour and pension services in the Islands. With the Department being given the power to administer fines, and with the introduction of a letter of compliance (this will be a mandatory

requirement before a Trade and Business Licence is issued or renewed), the Government hopes that delinquent employers will take the steps to pay what they owe to pension plans on behalf of their employees.

Changes to fines & penalties

There have been substantial increases in a range of fines and other penalties, including the penalties for an employer failing, without reasonable cause, to make mandatory pension contributions – see s. 4(4). Penalties have been increased from CI \$5,000 to CI \$20,000, or imprisonment for a term of 2 years, or both, for a first offence; and the penalties have been staggered for second and third offences as follows: for a second offence, a fine of CI \$50,000, or imprisonment for 3 years, or both; and, for a third offence, a fine of CI \$100,000, or imprisonment for 5 years, or both.

Employers

The Law introduces obligations for employer's to "cause to be kept" proper payroll accounts, books and records in relation to pensionable employees for a minimum period of five years from the date on which they are prepared. Employers also have an obligation created by section 18A(7) to maintain a written notification signed by the employee of the employee's enrolment in a accepted pension plan.

S.90A of the Law clearly establishes that where a body corporate commits an offence that every director or officer concerned in the management of the entity commits that offence unless they can prove that the offence was committed without their consent or connivance or that they exercised reasonable diligence to prevent the commission of the offence.

For more information, review the changes in our detailed briefing [here](#).

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