

Timely information about pensions, group insurance and other sectors related to human resources

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Pension Plans

Blended Families and the Death Benefit

It is increasingly common to be in a situation where one's spouse at retirement is not the same spouse as when one's children were born. This makes it necessary to ensure that upon your death, your children are not overlooked in favour of the children of your current spouse. Some believe, incorrectly, that the remedy for this is simply to designate their children as the beneficiaries of their pension plan.

Who will receive the death benefit from my pension plan?

The answer to this question seems obvious. Most plan members will say that it's the person whose name they entered on their plan's beneficiary designation form. But is it really that simple?

A plan member is entitled to name a beneficiary. A member who does not have a spouse may designate anyone as the beneficiary of the pension plan's death benefit. The beneficiary could be a child, a sister, or even a charitable organization. So far, so good.

But if the member has a spouse, things become more complicated. Pension legislation provisions take precedence over the member's freedom to choose a beneficiary. By law, the death benefit goes first to the spouse. So even if a member who has a spouse designates someone else to receive the pension death benefit, the minimum benefit provided by law will be paid to the surviving spouse.

However, the spouse can waive this benefit. In such a case, the benefit will be paid to the beneficiary designated by

the member, or to the member's heirs. But this waiver is not absolute, because it can be revoked by the spouse at a later date.

What does my pension plan say about who my spouse is?

Because the spouse is usually the primary recipient of the death benefit, it is important to determine who actually qualifies as your spouse. Members should check their pension plan rules to find out how the status of spouse is actually determined. One must also, in Québec, take the provisions of the Civil Code of Québec into account. To qualify as a spouse, must one be legally married, in a civil union, in a common-law relationship or the parent of the same child? And if one spouse was in a relationship before, must that person be divorced or separated in order for the new spouse to be recognized as such and eligible to receive the death benefit?

Note that the definition of spouse varies from plan to plan. Indeed, the definition in your pension plan may be different than the one in the Québec Pension Plan. Newspapers

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regularly publish stories in which it seems unfair that a person was recognized as the surviving spouse, but in fact it's all completely legal. That's why it's important to figure out who is actually considered your spouse under the law, and under your pension plan. It may be necessary to take legal steps to make sure that the person you consider your spouse is unequivocally recognized as such.

The death benefit

The death benefit can take several forms. Before retirement, it is usually the value of the member's pension. After retirement, it may be the value of the monthly pension payments that were guaranteed when the member retired, i.e., 60, 120 or 180 monthly instalments. In most cases where there is a spouse, the death benefit is a pension payable to the surviving spouse for his or her lifetime.

At retirement, it is possible to elect a pension that includes both a lifetime pension to the surviving spouse and a minimum number of monthly payments. Suppose a plan member who is entitled to a monthly pension of \$100, with 60% of that pension continuing to be paid to her spouse when she dies, elects a 10-year guaranteed period. That member will receive a monthly pension of \$100 for as long as she lives. When she dies, her spouse will receive a monthly pension of \$60. In addition, the 10-year guarantee means that no matter what happens in the first 10 years, the monthly \$100 pension will continue to be paid, regardless of whether the death of the member or her spouse, or both, occurs during that period.

Examples of two difficult pre-retirement situations

A widower who was a member of his plan for 30 years names his children as his beneficiaries under the plan. He thinks that settles the matter. A few years later he starts a relationship with a person who becomes his common-law partner; subsequently, he dies. If the common-law partner

has not waived the death benefit, that benefit goes to the partner, and this means not just the portion of the pension accrued during the time they lived together, but the entire pension benefit.

A woman with two daughters marries a man with two sons. She discovers that she has a serious illness and will soon die. Although she trusts her spouse, she doesn't want to make him her beneficiary, because she doesn't know who will inherit the money from her pension benefit when he dies. That money could be divided among the four children, or worse, just between his two sons. She has no choice but to ask him to waive the death benefit and hope that he doesn't revoke the waiver. If her plan allows it, she can then name her two daughters as beneficiaries of the death benefit from her pension plan.

Example of a difficult post-retirement situation

At retirement, it is possible to elect a pension with a death benefit that is composed of both a lifetime pension to the surviving spouse and a minimum number of payments. Suppose a member who is entitled to a monthly pension with a 60% survivor pension payable to her spouse elects a guaranteed period of 15 years. The member receives a monthly pension of \$100 during her lifetime. When she dies, her spouse, if he survives her, will receive a monthly pension of \$60. In this example, the guarantee applies for 15 years.

Let's return to the scenario of the married couple where the plan member has two daughters and the spouse has two sons. Assume the member designates her spouse as her beneficiary. When she retires, she will receive a monthly pension of \$100. This pension will continue to be paid to the spouse at a rate of 60% and is guaranteed for 15 years. Suppose the member dies after receiving her pension for one year. Since the pension is guaranteed for 15 years from the date of the first payment she received, the monthly \$100 pension will continue for another 14 years. At the

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end of the 14 years, if the spouse is still alive, the monthly pension will reduce to \$60 for the rest of the spouse's life.

If the spouse dies four years after the member, there will still be 10 years of guaranteed payments. Who will receive these 10 years of monthly payments: the member's daughters, the sons of the spouse, or someone else? The Supplemental Pension Plans Act does not provide an answer to this thorny question. Jurisprudence on this matter indicates that the surviving spouse cannot designate a beneficiary for this benefit since he was not a member of the pension plan. However, the death benefit to the spouse becomes part of his estate and he can bequeath the amount in his will. This solution is not very practical if the plan member wanted the guaranteed payments remaining after the death of her spouse to go to her daughters.

One solution would be to amend the text of the plan without prejudice to the surviving spouse, so that if guaranteed payments remained after the spouse died, they would go to the member's daughters. But this approach does not seem to have been embraced by plan sponsors. However, the Supplemental Pension Plans Act does not oblige the member to designate her spouse as the beneficiary of the guaranteed payments. So the member could, if the plan allows it, designate her two daughters as beneficiaries of any guaranteed payments after the death of her spouse.

Nevertheless, the Supplemental Pension Plans Act does state that the designation and revocation of beneficiaries, other than the designation related to spousal benefits, are governed by the relevant articles of the Civil Code.

In short...

A plan member who doesn't have a spouse can designate anyone to receive the death benefit. When a member does have a spouse, he or she should check to determine who legally qualifies as the spouse. That spouse, if any, is entitled to the death benefit from the plan, but may waive that entitlement. However, that waiver can be revoked.

Lastly, when the member's spouse dies after the member, the Supplemental Pension Plans Act does not require that the balance of any guaranteed benefits go to the spouse's estate. If the member has named someone other than the spouse as beneficiary to receive the remaining guaranteed instalments, it is that person who will receive them. It is thus possible to name a beneficiary other than the spouse to receive any remaining guaranteed payments.

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