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PUBLICATION

Amendments to Pension Benefits Act in Effect on July 1, 2012

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Certain amendments to the *Pension Benefits Act* (the "PBA") extending the application of "grow-in benefits" in defined benefit plans to eligible terminated employees will come into effect on July 1, 2012.

Currently, the PBA permits eligible employees to become entitled to certain enhanced early retirement benefits upon the partial or full wind up of their employer's defined pension plan. In order to be eligible, an employee's age plus of years of service must total at least 55.

The amendment to the PBA will, as of July 1, 2012, extend access to these grow-in rights to those eligible employees whose employment has been terminated by their employer if their age plus years of service total at least 55. As a result of this extension, certain employees will be able to access enhanced early retirement benefits despite the termination of their employment. However, not all terminated employees will be eligible. A draft Regulation prescribes when grow-in rights will be available.

An employee who receives written notice of termination may still be entitled to exercise grow-in rights if he or she resigns not more than 60 days before the specified termination date.

Employees whose employment is terminated as a result of wilful misconduct, disobedience or wilful neglect of duty will not be entitled to grow-in rights. Further, employees hired on the basis that their employment will end on the expiry of a definite term or contract or on the completion of a specific task are also excluded. "Construction employees" as prescribed under the *Employment Standards Act, 2000* ("ESA") are similarly excluded. Finally, employees on temporary lay-off will not be eligible.

As a result of this amendment, the number of employees who may claim enhanced pension benefits on and after July 1, 2012 will significantly increase, so too the cost to employers associated with this extension of enhanced pension benefits to departing employees. Employers

will have to ensure that adequate funding is in place for severance and pension liabilities to eligible departing employees.