



Employer *update*

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Administering Grievance Awards and Settlements

The OPSEU Pension Trust is often asked to administer provisions of grievance settlements and awards that affect the member's accrual of pension benefits and/or the payment of contributions under the OPSEU Pension Plan.

These provisions can only be administered if they are permissible under the terms of the Plan. OPTrust cannot provide a pension benefit that is not consistent with the terms of the Plan text or that is contrary to legislation. Any grievance settlement or award that does not meet these criteria does not have jurisdiction over OPTrust and the administration of the Plan's provisions.

We therefore recommend that the parties to a grievance contact OPTrust to clarify the terms of the Plan and their implications, should they be considering a possible settlement or seeking an arbitration award where pension benefits are at issue.

Contribution Payment Requirements

The Plan establishes the proportion of required contributions or buyback costs that must be paid by the member and the proportion that must be paid by the employer. Under the Plan, buybacks are either entirely member funded, or the cost is shared between the member and the employer, depending on the type of service that is being purchased. Only in the case of periods when the member qualified for LTIP can the employer make a payment on behalf of the member.

Any grievance award or settlement that involves the employer paying OPTrust directly for a member's share of buyback contributions is contrary to the terms of the Plan. As a result, OPTrust is not able to administer such grievance settlement provisions.

The member's share of contributions for a buyback must be paid directly by the member – either through payroll deductions or as a lump sum. If the member does not pay his or her share of the

buyback cost to directly to OPTrust, he or she cannot receive credit in the Plan for the period of service in question.

This also facilitates tax reporting since the member is entitled to the income tax receipt showing the amount of his or her buyback contributions received by OPTrust.

Buyback Eligibility

It is important to note that to buy back credit as a result of a grievance settlement or award, the member must be eligible to purchase credit for the period of service in question under terms of the Plan. That is, OPTrust must receive his or her buyback application within the Plan's normal 24-month buyback application deadline.

Retroactive Salary & Contributions

Under the Plan, employers are required to deduct member contributions from all "salary" paid to a member, and to pay the corresponding employer contributions. This applies to the retroactive payment of wages and other earnings that meet the Plan's definition of "salary."

If a grievance award or settlement provides for a payment of retroactive wages, the member's pension contributions, plus interest, must be deducted by the employer from the lump-sum payment on a mandatory basis and remitted to OPTrust. The employer must also remit a corresponding contribution payment, based on the employer contribution formula. The terms of the Plan do not allow the employer to pay the member's share of contributions on the member's behalf.

Where a grievance award or settlement provides for other payments that do not meet the Plan's definition of "salary," the payments are not considered pensionable earnings. In such cases, no contributions are payable, and the payments will have no impact on the member's earned pension benefit.

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For more information on the definition of “salary” under the OPSEU Pension Plan, please see OPTrust’s [Employer Update #4](#) (February 18, 2002).

Pension Bridging

Any grievance settlement or award that involves bridging to an unreduced pension (Factor 80, Factor 90, 60/20 or Age 65) must be consistent with the Plan’s maximum leave of absence rule.

Under the bridging provision, an eligible member who has received a notice of layoff may be able to qualify for an unreduced pension. This is done by combining: i) the six-month surplus notice period, ii) the period represented by the termination pay, when converted into a leave of absence with pay, and iii) a bridging period of leave of absence without pay.

Under the Plan’s maximum leave of absence rule, the bridging leave without pay together with all other periods of post-1990 purchased leaves cannot exceed five years. For example, a member who has already purchased credit for a four-year educational leave has only one year left that can be used as a bridging leave without pay.

It is important to note that in the Ontario Public Service, the Central Collective Agreement also imposes a two-year maximum for the bridging leave.

Access to Contributions

Under the OPSEU Pension Plan, once a member is vested he or she has earned the right to a pension benefit payable at age 65. This benefit becomes accessible to the member only when his or her employment is terminated.

Therefore, OPTrust cannot administer any grievance settlement or award that provides for the member’s access to the employer pension contributions prior to termination. In fact, except for a vested member’s entitlement to the commuted value of a deferred pension at termination – which effectively includes some portion of the employer’s contributions – there is no provision in the Plan by which a member can access the employer’s contributions.

Termination & Reinstatement

Sometimes grievance settlements or awards that reverse a member’s termination or dismissal seek to “unwind” pension entitlements already administered by OPTrust at the time the member was terminated.

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OPSEU Pension Trust Employer Update

This employer update is intended to provide participating employers with news and information about the OPSEU Pension Plan. It does not create any rights to benefits not provided for in the actual terms of the Plan. In the event of any conflict or omission, the legal documents of the OPSEU Pension Plan will govern in all cases. Members who have questions about their pension benefits should contact OPTrust directly.

For more information, please contact the OPSEU Pension Trust.

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In such cases, any benefit previously paid would have to be returned to the Plan, with applicable interest. The status of the member's employment between the termination date and the date the member returns to work will also need to be addressed by the parties in order to determine the implications for the member's pension accrual and for the payment of any required contributions by both the member and the employer.

OPTrust Review

Like many defined benefit plans, the OPSEU Pension Plan contains complex provisions that reflect both minimum benefit provisions under Ontario's *Pension Benefits Act* and maximum benefit accruals under the *Income Tax Act*.

We therefore recommend that the parties to a grievance contact OPTrust in advance to ensure that the terms of any settlement or arbitration award affects the member's pension can be administered under the terms of the Plan.
