



# Employer *update*

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## New OPTrust Rules: LTIP Eligibility and Employer Contributions on the Member's Behalf

**U**nder the OPSEU Pension Plan, employers are required to make pension contributions on a member's behalf if the member "qualifies for a benefit under a long term income protection plan" (LTIP).

Until recently, OPTrust's administrative rules for this provision required the member to apply for and be approved to receive LTIP benefits before the employer would be required to pay the member's pension contributions. However, OPTrust has recently undertaken a review of the Plan's LTIP provisions. As a result of this policy review, OPTrust has determined that a member need no longer apply for or be in receipt of LTIP benefits for the employer to be required to pay the member's contributions on his or her behalf.

### New Administrative Rules

Instead, effective January 1, 2003, OPTrust will consider it sufficient that the member be *eligible to apply for* LTIP benefits and that the member be *medically eligible to receive* LTIP. Medical eligibility may be determined either by:

- the member submitting an application and being approved for LTIP benefits, or
- the employer "testing" to determine medical eligibility, where the member does not wish to apply for LTIP benefits.

In cases where the member meets these criteria, the employer will be required to pay the member's OPSEU Pension Plan contributions on the members' behalf.

### Background

Article 7.3(2) of the Plan states that:

*If a member qualifies for a benefit under a long term income protection plan as a result of a disability incurred on or after the 1<sup>st</sup> day of July, 1974, the employer that employed the member on the date when the member qualified for the benefit shall, subject to subsection (7), contribute to the Fund on behalf of the member the amounts set out in subsection (3), (4) and (5) while the member continues to qualify for the benefit.*

Subsection (7) of Article 7.3 further states that contributions continue "whether or not the member is in receipt of the benefit under the Long Term Income Protection Plan."

As a result of our policy review, OPTrust has concluded that the wording of the Plan does not support a *requirement* that the member apply for LTIP. Instead, in cases where a member is eligible to apply but chooses not to do so, the employer would be required to "test" the member for eligibility to receive LTIP benefits.

This interpretation is similar to the "Dupuis rules," which will be familiar to employers who are covered by the Central Collective Agreement in the Ontario Public Service (OPS). Unlike the pension rules surrounding the Dupuis case, however, the OPTrust policy does not require the member to be a WSIB claimant. In addition, the Dupuis rules apply only to members who are

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covered by the Central Collective Agreement between OPSEU and the Government of Ontario. The new OPTrust policy applies equally to all plan members, including those employed by agencies, boards, commissions and organizations that are not part of the OPS.

#### **“Testing” for LTIP Eligibility**

Practically speaking, if the member is eligible to apply for LTIP but does not wish to do so, OPTrust’s new policy requires that the employer “test” the member’s medical eligibility to receive LTIP benefits. The “test” for LTIP eligibility would determine whether the disability prevented the member from performing his/her own job (generally, the “test” for LTIP qualification during the first 24 months).

We appreciate that employers usually do not have the skills to determine medical eligibility. Accordingly, employers may wish to arrange for the provision of medical consultation services from the LTIP carrier.

#### **Application of the New Rules**

These new rules are effective from January 1, 2003. As a result, employers must ensure that members who are eligible to apply for LTIP benefits after 2002 and who choose not to do so are “tested” for eligibility to receive LTIP.

It is important to note that this policy interpretation is retroactive to January 1, 1990. However, OPTrust will be applying the new rules to periods before 2003 on a case-by- case basis. If outstanding contributions are required as the result of the application of these new rules on a retroactive basis, we will advise employers accordingly.

We appreciate that most members who are eligible for LTIP do choose to apply for LTIP benefits following the six months obligatory waiting period. However, there may be instances where the member does not wish to apply for LTIP but does want the employer to make pension contributions on his/her behalf. In these cases, the employer must ensure that the member is “tested” for LTIP qualification.

## **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.

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