Manitoba

Office of the Superintendent - Pension Commission

Update #11-02

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Pension Committees

Reference: The Pension Benefits Act, Section 28.1, Pension Benefits Regulation, Part 3

The purpose of this Update is to explain the role and responsibility of a pension committee as required by *The Pension Benefits Act* (Act) and Pension Benefits Regulation (Regulations) and the basics of establishing one.

Who can administer a pension plan?

The Act requires that a pension plan be administered by the following person or body:

- in the case of a multi-unit pension plan, by a board of trustees structured in accordance with subsection 26.1(4) of the Act;
- in the case of a jointly trusteed plan, by a board of trustees with at least as many trustees representing members of the plan as there are trustees representing the employer;
- in the case of a simplified money purchase pension plan, by an administrator as defined in section 9.2 of the Regulations;
- in the case of a plan with fewer than 50 members, by the employer;
- where an Act of the Legislature makes a board, agency or commission responsible for its administration, by that board, agency or commission; and
- in any other case, by a pension committee.

Plans with 50 or more members must have a pension committee; however what if the number of members fluctuates?

If the number of members varies over time, to determine if a pension committee must be established the current administrator should take the average of the number of plans members over the last 12 months. If this average is less than 50, it would be advisable for the administrator to review the plan’s membership for this purpose regularly, perhaps when the Annual Pension Information Return for the plan is being prepared.

Where a pension committee has been established and the plan’s membership falls below 50 members, the pension plan may be administered by the employer and the pension committee dissolved if a majority of the plan members so elect. The procedures for making an election should be consistent with the procedures established under the plan or supporting documents for the election of pension committee members.

When must a pension committee must be up and running?

A pension committee must be established and must begin administering the plan:

- in the case of a plan established before May 31, 2011, by September 28, 2011;
- in the case of a plan established on and after May 31, 2011, within 120 days after the plan is established.

The current administrator or the employer must administer it until the pension committee is established.

What are the rights and obligations of the pension committee?

A pension committee has

- all the rights, powers and obligations of an administrator under the Act and this Regulations;
- the power and the obligation to determine matters of policy and interpretation in the administration of the plan in accordance with its terms;
- the power to make recommendations to the employer regarding amendments to the plan or the supporting documents; and
- any other rights, powers and obligations assigned to the administrator by or under the plan or the supporting documents.

Having committee members that represent plan members form a part of the committee is not to give administrative control over the plan to those committee members or the plan members, but rather to allow members to be as informed as possible, while providing them with a forum in which to monitor their interests.

What are the rights and obligations of non-voting member's?

A non-voting member has all the rights and obligations of a voting member of the committee, including the right to receive notice of and participate in meetings of the committee, except the right to vote on any matter to be decided by the committee.

What are the required plan provisions for a pension committee?

A pension plan that must be administered by a pension committee must include plan provisions that:

- give the pension committee the rights, powers and obligations necessary for the committee to administer the plan in accordance with the Act and Regulations;
- set the number of members to be appointed or elected to the committee ensuring as a minimum that
  - the active members, as a group, are required to appoint or elect at least one voting member of the committee,
  - the non-active members, as a group, are required to appoint or elect at least one voting member of the committee,
  - each of those groups may appoint or elect one additional non-voting member of the committee;
- establish the term or terms of office for members of the committee;

- establish procedures for electing or appointing committee members that are consistent with the Regulations.

The plan may also provide for the compensation and/or reimbursement of a committee member from the pension fund in accordance with the Regulations.

The plan must also include provisions that enable pension committees to employ and delegate specific tasks or functions to agents. The pension committee should make the delegation in writing and must ensure that the individual has the necessary skills, give him or her clear instructions and adequately monitor his or her work.

Employers and sponsors will need to ensure the plan or the supporting documents set out the process for electing and or appointing pension committee members, and the rights, powers and obligations necessary to administer the plan according to the Act and Regulations and otherwise assigned to it by the employer.

What are the rules regarding pension committee members compensation and reimbursement?

An active member of a plan who is a member of the plan's pension committee is entitled to take time off from his or her regular work duties, without loss of pay or other benefits, in order to carry out his or her duties on the pension committee.

Generally, pension committee members are unpaid. They are not entitled to any remuneration under the Act, unless the plan or the supporting documents provide for one or both of the following:

- the payment of compensation from the pension fund to a member of the pension plan committee for attendance at meetings or for the performance of other duties as a member, at any time beyond regular work hours for which the member is paid by an employer under the plan;
- the payment of reimbursement from the pension fund to a committee member for expenses reasonably incurred by the member for carrying out his or her duties as a committee member.

Further, the committee should adopt a clear policy on administration expenses in its rules of procedure and governance and provide the policy to each committee member. The policy should specify the allowable expenses as well as the reimbursement rules (receipts, etc.). The other administrative expenses related to the duties of members, such as expenses for training, may also be paid from the pension fund, if the plan or the supporting documents so provide. Such expenses must be reasonable and appropriate, and should be primarily for the benefit of members and plan beneficiaries.

What are the procedures for electing or appointing committee members?

The procedures set out in the plan or the supporting documents for electing committee members may provide for the elections to be conducted at a meeting of members and other beneficiaries, by mail, by electronic voting, by the casting of ballots at a specified location, or by any combination of these methods.

The procedures for the election of a committee member by active members must:

- require the employer to provide written notice of the nomination and election process to all active members;
- allow active members to nominate persons to fill the position by filing written nominations with the employer within the nomination period specified in the notice referred to above;
- require the employer to provide, at the end of the nomination period, written notice of the nominees and the voting process to all active members;
- provide for the vote to be held by secret ballot, with each active member entitled to one vote for each committee member to be elected by the active members; and
- require the employer to notify the active members of the election results.

The procedures for the election of a committee member by active members may allow a notice to active members who regularly work at the employer's workplace to be given to them by posting it in one or more areas of the workplace that are regularly accessed by them.

Given the employment relationship that exists, it is the employer and not the administrator that has responsibility for the procedures for electing a committee member by the active members.

The procedures for the election of a committee member by non-active members and other beneficiaries must:

- require the administrator to provide written notice of the nomination and election process to all non-active members and other beneficiaries;
- allow non-active members and other beneficiaries to nominate persons to fill the position by filing written nominations with the administrator within the nomination period specified in the notice referred to above;
- require the administrator to provide, at the end of the nomination period, written notice to all non-active members and other beneficiaries of the nominees and of the voting process;
- provide for the vote to be held by secret ballot, with each non-active member and each other beneficiary entitled to one vote for each committee member to be elected by the non-active members and other beneficiaries; and
- require the administrator to notify the non-active members and other beneficiaries of the election results.

What are the requirements if committee members are to be elected at a meeting?

If the plan or the supporting documents provide for committee members to be elected at a meeting, the plan must establish, or require the committee to establish, rules of procedure for

- calling a meeting for the purpose of the election;
- ensuring that written notice of the date, time, place and purpose of the meeting is given to all members and other beneficiaries and to the employer;
- ensuring that the notice includes information about the nominees for the positions to be filled at the meeting; and
- conducting the election at the meeting.

What happens if no committee member is elected by the active or non active members?

The plan or the supporting documents must provide for the appointment of at least one pension committee member from:

- the active members to represent active members; and
- the non-active members to represent non-active members and other beneficiaries.

Are there any alternatives for the election or appointment of committee members?

If a majority of the active members are represented by a union, the plan or the supporting documents must permit the union to appoint a person as a pension committee member.

A union is any organization of employees formed for purposes that include the regulation of relations between employers and employees, and includes a duly organized group or federation of such organizations.

Also, if a majority of the non-active members are represented by an association, the plan or the supporting documents must permit the executive of the association to appoint a person as a pension committee member.

If fifty percent plus one active members are not represented by a union, then the committee member representing the active members must be elected or appointed in accordance with section 3.13 of the Regulations. This would also be the case if an association did not represent fifty percent plus one of the non-active members.

What are the rules regarding committee members' terms of office?

The term of office of a person elected or appointed as a pension committee member must not exceed three years.

A pension committee member continues to hold office after the end of his or her term until he or she is reappointed or re-elected or a successor is appointed or elected.

What are the rules for filling vacancy for an unexpired term?

The procedures set out in the plan or the supporting documents for electing or appointing committee members must provide for a vacancy to be filled for the balance of the unexpired term within 120 days after it arises, unless the unexpired term is less than 120 days.

What are the requirements for rules of procedure and governance for pension committees?

The role of a pension committee is to ensure the daily financial and administrative operations of the pension plan by implementing adequate means to protect the pensions and other benefits of the members and plan beneficiaries, as well as to conserve and enhance pension fund assets. Its role is similar to that of a corporate board of directors and is distinct from the role of the employer, who decides to establish a pension plan, to amend it and to terminate it.

The pension committee's rules of procedure and governance must provide for the mechanisms and rules needed to ensure the proper operation of the pension committee and the sound administration of the pension plan. Furthermore as the plan's administrator, the pension committee must operate in compliance with requirements of the Act and Regulations.

Like any person who administers the property of others, the pension committee has the legal obligation to exercise the care, diligence and skill that a person of ordinary prudence would exercise in similar circumstances. It must act in the best interest of plan members.

A pension committee must establish written rules of procedure and governance for exercising its powers and discharging its duties in accordance with the Act, Regulations and the terms of the plan.

Subject to the plan or the supporting documents, the rules of procedure and governance must

- provide for the election or appointment of a chair, a vice-chair and a secretary, and any other officers that the committee considers advisable;
- set out the powers and duties of the committee's officers;
- govern the making of recommendations respecting plan amendments to the employer;
- include provisions respecting meetings of the committee, including
    - requiring meetings at regular intervals, and set the dates, times and places of those meetings,
    - establishing procedures for changing the date, time or place of a regular meeting and govern the notice to be given of the change,
    - establishing procedures for calling and holding special meetings of the committee,
    - governing the conduct and procedures of meetings, including the voting and quorum requirements for the transaction of business;
- include provisions governing the appointment, remuneration, supervision and evaluation of any delegates, agents or service providers;
- require the rules to be reviewed at least once every three years;

and may include any other rules that the committee considers necessary or advisable for the operation, oversight, management and administration of the plan.

It should be noted that the frequency of meetings must be often enough to allow its members to carry out their duties. Holding only one meeting annually is not enough to adequately monitor plan administration. A committee should meet as often as needed to properly supervise the day-to-day administration of the plan and the people to whom the committee has delegated functions.

Governance entails the structure and processes for oversight, management and administration to ensure that fiduciary and other obligations are met. In the context of a pension plan, governance is about delivering on the pension promise consistent with the plan and other supporting documents, as well as pension legislation. Pension legislation holds the pension plan administrator as ultimately responsible for the governance of the pension plan, whether the administrator is a board of trustees, a pension committee or the plan sponsor.

Administrators may also wish to refer to the CAPSA's *Guideline No. 4: Pension Plan Governance Guidelines* and *Self-Assessment Questionnaire* to assist them in fulfilling their governance responsibilities by achieving and maintaining good governance practices.

While implementing rules of procedure and governance for administering the pension plan can reduce the risk of error or being sued, it does not eliminate it completely. It is advisable for the pension committee to ensure its members have liability insurance. Liability insurance can be treated as an administrative expense and paid from the pension fund.

What happens if there is a conflict between the committee's rules/plan or documents?

In the event of a conflict between a provision of the committee's rules and the plan or the supporting documents, the latter prevails unless the plan or supporting documents provide otherwise.

Users of this update are strongly urged to refer directly to the appropriate sections of the Act and Regulations, as this document is for information purposes only.

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This update has no legal authority. The Pension Benefits Act of Manitoba and the Pension Benefits Regulation should be used to determine specific requirements.