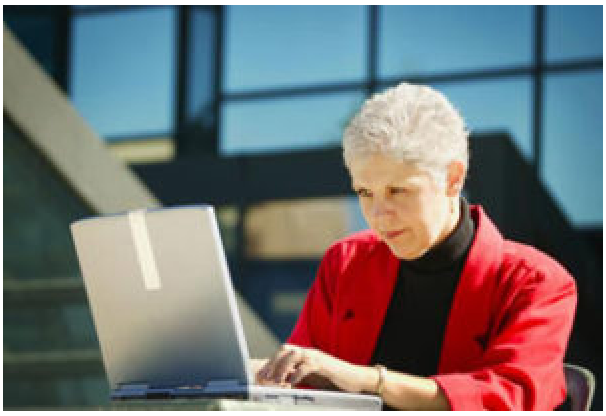
Retirement Savings Plan Administration During COVID-19



The COVID-19 crisis has had a significant impact on many Canadian workplaces. Employers that sponsor and administer registered pension plans and other retirement savings plans are no doubt facing questions from employees about those plans. Maintaining the plans in their current form may be challenging for many employers.

In this article, we briefly highlight the obligations of an employer as administrator of a registered pension plan or other retirement savings plan. We also discuss some of the options available to employers to address and potentially reduce those obligations.

Duties of Plan Administrators – General

An employer that sponsors and administers a registered pension plan has duties and obligations under both legislation and the common law. Those duties and obligations must continue to be met regardless of the current circumstances; a breach of any of those duties and obligations can result in legal liability.

For example, among other duties, under pension standards legislation, the administrator of a registered pension plan has a duty to act with a certain standard of care, a duty to provide information to members and other persons, and a duty to submit employer and member contributions within the time prescribed under the legislation. The administrator of a registered pension plan also has certain duties under the common law, including a duty to act in the best interests of plan members and other plan beneficiaries.

An employer that sponsors and administers retirement savings plans that are not subject to registration under pension standards legislation, such as a Group Registered Retirement Savings Plan ("Group RRSP") or deferred profit sharing plan ("DPSP"), is nonetheless still subject to duties under the common law.

Readers may also be familiar with the various best practice guidelines published by the Canadian Association of Pension Supervisory Authorities ("CAPSA") that apply to registered pension plans. Guideline No. 3, the Guidelines for Capital Accumulation Plans, applies also to Group RRSPs, DPSPs and Group Tax Free Savings Accounts, under which members are permitted to make investment decisions among two or more options, in addition to member-directed defined contribution registered pension plans.

What to do now?

How does an employer that sponsors and administers a registered pension plan or other retirement savings plan continue to meet its legal obligations during the COVID-19 crisis? Can the employer make changes to any of the plans in response to the crisis?

Contribution Obligations

Continuing to meet its contribution obligations under retirement savings plans will be challenging for many employers. To date, no Canadian jurisdiction has publicly announced changes to the contribution rules under pension standards legislation.

Statutory funding relief in respect of registered pension plans would be a welcome change for many employers and could also help to relieve the economic burden on those employers. However, the interests of plan members, many of whom are facing significantly reduced retirement savings, must also be considered before any statutory changes are adopted.

In the absence of statutory funding relief, employers that sponsor and administer registered pension plans may be considering unilaterally reducing the contribution requirements under a defined contribution registered pension plan or the promised benefit under a defined benefit registered pension plan. Before implementing any such change, an employer should seek legal advice in order to determine whether the change is permitted under the terms of the plan text and applicable pension standards legislation and to assess the potential risk for claims of constructive dismissal. Employers who sponsor and administer other types of retirement savings plans should consider the same issues, with the exception of issues under pension standards legislation.

Regulatory Filings and Disclosures

In addition to contribution obligations, under pension standards legislation, employers that sponsor and administer registered pension plans are required to file certain documents, such as financial statements and annual information returns, with the applicable pension regulator and to provide certain information to members. In recognition of the COVID-19 crisis, some pension regulators have extended certain filing deadlines or confirmed that extensions may be requested.

For example, the federal pension regulator, the Office of the Superintendent of Financial Institutions (“OSFI”), has formally extended the deadlines for the filing of a number of documents and has also announced an extension of the deadline for distribution of the annual statements to members, former members, spouses or common-law partners. OSFI has, however, indicated that in order to manage expectations of plan members and other persons, the administrator should notify such persons of any delay in the distribution of statements.

The Ontario pension regulator, the Financial Services Regulatory Authority (“FSRA”), has also issued a number of statements in response to the crisis. To date, FSRA has not formally extended the timelines for regulatory filings or the distribution of disclosure statements. However, it has indicated that filing extensions can be requested and in respect of the distribution of member and former member disclosure statements, has indicated that an administrative monetary penalty for late distribution will not be imposed if the administrator contacts FSRA to discuss its challenges in issuing the statements and its proposed plan of action.

It is expected that additional relief may be announced by other pension standards regulators. Employers should check the applicable pension regulator's website for announcements on relief measures or reach out to the regulator directly to discuss any issues it may have in meeting its obligations under pension standards legislation.

Plan Governance and Member Communication

From a governance perspective, to the extent possible, regular pension or investment committee meetings should continue. With in-person meetings discouraged, pension and investment committees should meet by phone or other means of communication to ensure that they are meeting their duties with respect to the pension or other retirement savings plan.

During these uncertain times, it is critical that plan administrators also review their investment policy in order to determine whether any changes can and should be made to the investment of plan assets. As many employers do not have investment expertise, consultation with expert advisors is key during such times.

Communication with plan members is yet another element of plan administration that will require time and attention during the COVID-19 crisis. Many plan members are understandably concerned about the state of their retirement savings and will be looking to their employers for answers. Employers that sponsor and administer retirement savings plans must be careful to provide clear, accurate and complete information about the plans but, at the same time, be cautious of providing investment or financial advice.

For further information or to discuss your obligations as a plan administrator, please contact Kim Ozubko at kozubko@millerthomson.com or (416-597-4338).