

The Perils Of Poor Pension Plan Governance



Similar to corporate governance, good retirement plan governance is designed to ensure that the retirement plan is operating well and paying the benefits it promised to its members. An important part of operating well is fulfilling regulatory compliance requirements, including making all prescribed filings on time.

Running the risk of penalties and regulatory complaints

Recently, Ontario's pension regulator, the Financial Services Regulator Authority of Ontario (FSRA), began imposing Summary Administrative Monetary Penalties (AMPs) on registered pension plans for late filings. According to FSRA's December 31, 2023, [*Pensions Sector Overview and Activities Report*](#), Summary AMPs were applied to nine pension plans in amounts ranging from \$25,000 to \$100,000—all for late filings. In most cases, AMPs cannot be paid from the pension fund, meaning that they must be directly paid by the sponsoring employer. Well-governed plans may take some comfort in knowing that FSRA has stated that it prefers to work with plan administrators to bring their filings up to date, and that the AMPs were only imposed after multiple reminders. British Columbia has also introduced an AMP system for the registered pension plans it regulates.

Of course, while AMPs are one consequence of poor pension plan governance, they are not the only risk. Member complaints to the pension regulator, allegations of breach of fiduciary duty or breach of trust, and [even class actions can all be outcomes of governance failures](#). In the past, late filings have also been one reason for FSRA to select a plan for an examination, which can be time-consuming and costly for the plan administrator who is otherwise generally meeting its obligations.

Mitigating risks with robust pension governance

A good and well-documented pension governance structure will help to avoid outcomes like AMPs or worse. Plan administrators may minimize these risks by taking the following steps:

- **Ensure that roles and responsibilities for regulatory compliance have been assigned and communicated** (i.e., a person has been identified as being responsible for ensuring filings and other requirements are completed).
- **Avoid gaps when someone leaves their job.** Written roles and responsibilities incorporated into job descriptions mean that the successor knows these are tasks they are required to assume.
- **Establish oversight at more senior levels**, including the board. Appropriate

reporting from delegates requires someone to turn their mind to whether regulatory requirements are being met, which means oversights are more likely to be caught sooner and addressed quickly.

- **Implement appropriate monitoring of service providers.** Too often, employers and plan administrators rely too heavily on service providers to perform the administrator's regulatory requirements, forgetting that it is the plan administrator who is ultimately responsible for the plan's operation, and not the service provider.

Ontario is also proposing to require all plan administrators to have and file written governance policies, and defined benefit pension plans to have funding policies. While these new requirements will initially be applied to target benefit plans only, they are expected to eventually be applied to all registered pension plans. Some other provinces already impose similar requirements.

Even the best governance systems need to be reviewed from time to time, so self-assessment or even assessment by an external party with pension governance expertise from time to time is important to evaluate whether gaps have arisen over time, roles and responsibilities have shifted, etc.

With pension regulators increasingly focused on governance and risk, and regulators flexing their regulatory muscles, pension and retirement plan governance is something all executives and boards should ensure is not being overlooked.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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