Stand Up Now If You Want to Be Heard – Ontario “Pension Advisory Committees”

September 01, 2016

Proposed regulations in connection with Ontario “pension advisory committees” will bring forth new obligations for pension plan administrators. Employers take note – the deadline to comment on such regulations is fast approaching: September 12, 2016.

Pension Advisory Committees

Pension advisory committees (“PA Committees”) are committees made up of member and retired member representatives. The members of a pension plan, by the decision of a majority of them participating in a vote, may establish a PA Committee.

The purposes of a PA Committee are to monitor, and make recommendations to the administrator regarding, the administration of the plan, and to promote awareness and understanding of the plan to applicable persons.

Although the ability to establish PA Committees has been in the legislation for some time, PA Committees have generally not been common. This may be because PA Committees historically were not entitled to receive much (if any) assistance with setting up the committee or the costs related for such a committee. However, that state of affairs will change shortly. Plan administrators should be aware of this.

Recent Developments on PA Committees

Bill 236 (*Pension Benefits Amendment Act, 2010*) contained amendments to the advisory committee sections in the *Pension Benefits Act* (Ontario). These amendments have not yet come into force, pending regulations to support them.

The first draft of those regulations was released in August 25, 2015 and comments were due on October 13, 2015. Very recently, on August 22, 2016, an amended draft of those regulations was released. Comments on this amended draft are due on September 12, 2016.

The Amended Draft Regulations

For the most part, the amended draft regulations did not materially change the first draft of the regulations. Some of the key points that the amended draft regulations prescribe are as follows:

- requirements related to a required notice of intent to establish a PA Committee (in order to establish such a committee), such as the minimum threshold of people that must provide such a notice, the contents of such notice and the timeframe the administrator has to discuss such notice with the applicable persons;
- the minimum number of members in a pension plan in order to establish a PA Committee;
- the timeframe that the administrator has to, among other things, distribute the ballot for voting (which is 90 days after receiving the notice, from 60 days after receiving the notice in the first draft of the regulations);
- the methods for a secret ballot vote (which were not present in the first draft of the regulations);
- requirements for the administrator to notify all applicable persons of the outcome of the vote and if a vote is successful, the minimum (four, from five in the first draft of the regulations) and maximum number of representatives appointed in accordance with the legislation;
- requirements for the administrator to take certain actions after the representatives of a PA Committee have been appointed, including ensuring they have access, at least annually, to an individual who can report on the fund's investments and discuss the administration of the pension plan and matters of interest to beneficiaries at meetings to be held at least twice per year, unless the PA Committee determines that one meeting is sufficient in any given year (the latter of which was not included in the first draft of the regulations);
- payment out of the pension fund of reasonable costs associated with holding a vote to establish a PA Committee and related to the PA Committee's establishment and operation; and
- not requiring the administrator to provide the assistance described in the amended draft regulations for three years (from two years in the first draft of the regulations) after the date of the most recent unsuccessful vote.

Deadlines and New Obligations

For employers who did not make submissions on the first draft of the regulations or who would like to make comments on the amended draft regulations, the deadline is September 12, 2016. Since these regulations will likely affect some plans, employers may choose to make submissions on the amended draft regulations.

Once the regulations are finalized, it is expected that the new PA committee provisions in the *Pension Benefits Act*(Ontario) will also be proclaimed into force. Once that happens, plan administrators will need to be able to respond appropriately, with the new provisions and regulations in mind, with respect to PA committee related matters.

If you would like to make submissions on the amended draft regulations or have any pension and benefits questions, please contact any member of our Pension and Benefits Group who would be pleased to assist.

By

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