

## Office of the Superintendent - Pension Commission

**Update #11-03**

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### **Pension Committees – Composition, Election and Appointment Procedures**

**Reference: *The Pension Benefits Act, Subsections 28.1, the Pension Benefits Regulation, Part 3***

Manitoba's Pension Benefits Act (Act) and Pension Benefits Regulation (regulation) are based on the simple principle that participation by and involvement of members in the administration of pension plans increases participants' awareness, provide a forum of choice in which to monitor members' interests and more clearly distinguishes the roles of employer and administrator.

Pension legislation defines the pension plan administrator as the body ultimately responsible for the governance of the pension plan. The plan administrator is responsible for the overall administration of the pension plan, which includes managing the pension fund.

The pension committee has

- all the rights, powers and obligations of an administrator under the Act and this regulation;
- 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.

This Update is intended to provide general guidance on rules of procedure and governance.

#### **Plans with Fifty or More Members**

If a pension plan has 50 or more members and was established before May 31, 2011, a pension committee must be established and must begin administering the plan by September 28, 2011.

If a pension plan has 50 or more members and was established after May 31, 2011, a pension committee must be established and must begin administering the plan within 120 days after the plan is established.

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 plan 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.

### **Plan Sponsor Decision Points**

Generally, the employer or plan sponsor has the power to establish, amend or terminate the pension plan. As the plan or the supporting documents must establish the procedures for the electing or appointing of committee members, subject to the requirements of the Act and regulation, the employer must determine the following matters related to the pension committee.

1. Size of the pension committee – How many pension committee members will be appointed or elected by members, and how many committee members will be appointed by the employer? *There is no requirement under the legislation for equal representation.*
2. Elections – Will elections 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?
3. Appointments – How will committee members be appointed?

The employer is responsible for appointing committee members to represent the employer.

If no committee member is elected by either the active members, as a group, or non-active members, as a group, the plan or the supporting documents must provide for the appointment of at least one committee member from the active members or non-active members, as applicable, to represent that group. For example, the plan may provide that existing committee members make that appointment, or the plan may provide for the appointment to be made by the employer.

4. Compensation and reimbursement – Will pension committee members receive compensation or reimbursement, or both?
5. Plan amendments – Will the employer reserve the authority to amend the plan, or delegate that authority to the pension committee?
6. Other rights, powers and obligations – Are there other rights, powers and obligations the employer wishes to assign to the pension committee by or under the plan or the supporting documents?

When making these decisions, the employer should ensure they are carefully documented. Further, if the employer is also presently the plan administrator, the employer must also administer it until the pension committee is established.

### **Plan Provision Checklist**

Based on the decisions reached above, the employer must ensure the plan or the supporting documents are amended to reflect those decisions and provide for the following:

- the rights, powers and obligations necessary for the committee to administer the plan in accordance with the Act and regulation; [reg. cl. 3.12(a)]
- the total number of members to be appointed or elected to the committee, ensuring that
  - the active members, as a group, appoint or elect at least one voting member of the committee,
  - the non-active members, as a group, appoint or elect at least one voting member of the committee, and
  - each of those groups may appoint or elect one additional non-voting member of the committee from their group; [reg. cl. 3.12(b)]
- the procedures for electing committee members by active members, including that:
  - the employer provides the active members with a written notice of the nomination and election process,\*
  - the active members are allowed to nominate persons to fill the position by filing written nominations with the employer within the nomination period specified in the notice,
  - the employer provides, at the end of the nomination period, written notice of the nominees and the voting process to all active members,
  - it 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
  - the employer notifies the active members of the election results; [reg. cl. 3.12(d), ss. 3.13(2)]

*\* Optional - For active members who regularly work at the employer's workplace, notice may be given to them by posting it in one or more areas of the workplace that they regularly access. [reg. ss. 3.13(3)]*

- the procedures for electing committee members by non-active members and other beneficiaries, including that:
  - the administrator provides the non-active members and other beneficiaries with a written notice of the nomination and election process,
  - the non-active members and other beneficiaries are allowed to nominate persons to fill the position by filing written nominations with the administrator within the nomination period specified in the notice,
  - the employer provides, at the end of the nomination period, written notice of the nominees and the voting process to all non-active members and other beneficiaries,

- it 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 non-active members and other beneficiaries, and
  - the employer notifies the non-active members and other beneficiaries of the election results; [reg. cl. 3.12(d), ss. 3.13(4)]
- elections may 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; [reg. ss. 3.13(1)]
- if the committee members are to be elected at a meeting,
- the 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, or
  - require the committee to establish the rules of procedure; [reg. ss. 3.13(5)]
- the procedures for appointing committee members, ensuring that
- if a majority of
    - the active members are represented by a union, the union appoint a person as a pension committee member, and
    - the non-active members are represented by an association, the executive of the association appoint a person as a pension committee member;
  - if no member is elected by the active members, an active member is appointed to represent them, and
  - if no member is elected by the non-active members, a non-active member is appointed to represent them; [reg. ss. 3.13(6)-(7), s. 3.14]
- the term of office for a committee member, ensuring it does not exceed three years; and that a 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; [reg. s. 3.15]
- vacancies are filled for the balance of the unexpired term within 120 days after it arises, unless the unexpired term is less than 120 days; [reg. s.3.16]

- if the pension committee members are to receive compensation or reimbursement, 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. [reg. s. 3.10]

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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.*

## Glossary of Terms

### **Active member**

Member of the plan who is accruing a pension under the plan, or would be accruing a pension if it were not for a temporary interruption in employment.

### **Administrator**

The person or persons who administer the pension plan. They arrange for pension payments, investment of the pension fund, etc. For most plans, a pension committee is responsible for administration (although the committee may hire a third party to administer the plan on its behalf). Some plans are administered by a board of trustees or similar body.

### **Beneficiary**

A person who on the death of an owner or member-owner, may become entitled to a benefit under the plan.

### **Employee**

An individual, employed to do work or to provide a service, who is in receipt of or entitled to remuneration for the work or service.

### **Employer**

The person or organization from whom an employee receives remuneration. This includes any or all of the employers that are required to contribute to a multi-unit pension plan or multi-employer pension plan.

### **Former Member**

A person whose membership in a plan has terminated, has transferred his or her pension monies that are subject to locking in to a prescribed plan, a life annuity or another plan, and no longer retains an entitlement under the plan.

### **Member**

An employee or former employee who is accruing, entitled to or receiving a pension under the plan.

### **Non-active member**

Member of the plan who is neither accruing a pension under the plan, nor would be accruing a pension if it were not for a temporary interruption in employment.

### **Prescribed**

As prescribed in the legislation; Act or regulation.

### **Regulation**

The Pension Benefits Regulation under *The Pension Benefits Act* of Manitoba.

### **Union**

Under *The Labour Relations Act* of Manitoba, any organization of employees formed for purposes which include the regulation of relations between employers and employees, and includes a duly organized group or federation of such organizations and for the purpose of this definition an organization may be composed of only one employee.