FTR Quarterly

Conducting a Benefits Plan Governance Health Check

Date: May 31, 2016

Pension plan governance has long had headline-grabbing status – and most plan sponsors regularly review their governance framework to identify and address any governance gaps. At the same time, employers who sponsor group benefits plans too rarely build regular reviews of their benefits plans into their larger governance responsibilities.

They should – because the stakes are high. Employers who provide benefits plan coverage for their employees contribute significant percentages of payroll to funding those plans each year. For some employers, these costs exceed those of their pension plan. And with the recent emergence of highly effective but higher cost specialty prescription drugs and rising claims in other areas, such as disability benefits, benefits plans are well worth an employer's close attention.

Conducting a "health check" of your current benefits plan governance is a good place to start. Here are three areas that you can review to assess the health of your current benefits plan governance and any governance gaps that may need to be addressed.

Complete documentation. The devil is in the details, which is why it's important to have complete benefits plan documentation in addition to the plan brochure. The benefits plan documentation, which may take the form of a policy, a services agreement, and/or a financial agreement, is the main contractual agreement between you, as employer, and your chosen benefits provider. It should set out all of the key benefits plan terms, as well as the agreed upon financial and service standards terms.

If the benefits provider was selected following a Request for Proposal (RFP), you will want to very carefully review the terms of any – and all – benefits plan documentation to make sure it is consistent with the commitments made during the RFP process. In some cases, it may be appropriate to enter into a separate service and financial agreement, setting out all of your expectations, both pertaining to service and the financial terms, and the agreed upon obligations of the benefits provider.

It is also important that the benefits plan documents be consistent with existing contractual obligations. For example, it is important to make sure that the benefits plan documents do not provide for a lower level of coverage than is required by a collective agreement.

Your benefits plan documentation must also be signed. In the event of a grievance or court action, signed documentation will provide clarity as to the enforceability of its terms and conditions. Once all terms have been negotiated and agreed upon, the key contracts should be signed and any future amendments should also be formally adopted.

Monitor performance. Both the financial and service-level performance of your benefits provider should be reviewed regularly. Usually, an employer focuses on the financial performance of the benefits plan – specifically, how much premiums have increased during the latest reporting period. This **is** an important aspect. However, the benefits provider's service performance is also critical – as this can be a key determinant of plan member satisfaction with the benefits plan.

Ideally, a benefits provider will identify its service level standards. It is a very good practice for the employer to require the benefits provider to set these out in a service level agreement that also sets out the process for monitoring the benefits provider's performance and any penalties associated with non-performance. A service level agreement can also articulate the process for developing service resolution plans in the event that problems do arise.

Even if you do not have a service level agreement in place, consider establishing an annual review of the benefits provider.

The annual review process will let you identify any concerns with your benefits provider's service and can also foster a better dialogue for the future.

Establish a decision framework. Pension plan governance focuses heavily on the framework within which decisions are made, including the appropriate allocation of roles and responsibilities. Benefits plans can be equally or more costly for an employer and a similar approach and focus is warranted for these plans.

As a first step, ensure that all decisions, both those of the employer and the benefits provider, are consistent with the prevailing plan documentation. Next, identify who is responsible for making decisions. For example, human resources staff may be asked by the benefits provider to make coverage-related decisions and it is important to clearly identify who has the authority to make such decisions.

Finally, clearly document all decisions regarding the benefits plan – both decisions relating to specific employees and decisions affecting the benefits plan more broadly (such as a design decision). The rationale for the decision should also be documented.

Improved Governance, Improved Outcomes

Enhancing your benefits plan governance can help you control costs and obtain improved service from your benefits plan provider. A strong benefits plan governance framework will also minimize litigation risk associated with changes that you wish make or that are being made based on the recommendation of your benefits provider to reduce costs.

As the costs of prescription drugs and other healthcare coverage continue to rise, benefits plan governance will increasingly become a "must have" – and conducting a governance health check now can start your plan down the road to improved governance and outcomes.

If you have any questions, please contact Natasha D. Monkman at 416-864-7302 or your regular Hicks Morley lawyer for more details.

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