PENSIONS AND EMPLOYEE BENEFITS

COVID-19 Practical Considerations: Pensions

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This note examines the pensions implications for employers and trustees of the recent outbreak of COVID-19.

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As a result of the COVID-19 outbreak, employees who are members of a pension scheme may be absent from work for a temporary period, be put on reduced hours, be subject to temporary lay-off, have their salaries reduced or seek to go on some form of statutory leave. Examples of the situations that may arise include: the employer's business being temporarily closed, employees contracting COVID-19 or caring for a family member who has contracted the virus, or employees being required to self-isolate having travelled to an affected region or having come in contact with an infected person.

The treatment of employees from a pension perspective will differ depending on whether the member is in a defined contribution ("DC") or defined benefit ("DB") scheme. The issue of contributions and whether they should continue is an immediate one in a DC scheme, whereas in a DB scheme the primary issue relates to whether the member is still in pensionable service.

DC SCHEMES

What are the pensions implications where a member is being paid while on COVID-19 related leave?

As a rule of thumb, generally where an employee is out of work but in receipt of full pay, both member and employer contributions to their pension scheme should continue as normal.

What are the pensions implications where a member is not being paid for COVID-19 related reasons?

Assuming that the non –payment of salary is permissible from an employment law perspective, whether or not pension contributions continue will depend on: tax and practical considerations; and on the rules of the scheme in question.

1. Tax and practical considerations
   Income tax relief is allowable solely against income from the employment to which the scheme relates. If the employee is not being paid, it is not possible for tax relieved employee contributions to be made to the scheme and therefore employee contributions will cease.
2. Contribution rules
   Both the employer and member contribution rules should be reviewed to determine if they contain any flexibility to stop or alter employer contributions in circumstances where the member is unpaid or is not making contributions. Often the employer will be afforded a discretion in relation to contributions in those circumstances (e.g. in a matching situation, if the member contributions ceased, so too would the employer contributions).
3. Temporary absence rules
   Most scheme governing documentation will include rules regarding temporary absences. Such a rule will generally

specify whether contributions to the scheme continue wholly, partially or are suspended and whether employer or trustee consent is required to this change. The rule will usually also set a time limit on how long an employee may be absent but remain in membership of the scheme (this will be subject to Revenue requirements).

What are the pension implications where a member is partly paid during temporary leave?

As there will be income from the employment to which the scheme relates, it will be possible for the member to make tax relieved employee contributions to the scheme. The definition of contribution salary (or other relevant definition), the contribution rule and temporary absence rule should be reviewed to determine if contributions continue in full or whether there is flexibility to make contributions as a percentage of pay actually received by the member. Some schemes may contain provisions specifically for members who are part-time employees which may also be relevant.

It is often the case the members who suffer an unexpected reduction in salary of this nature, request a contribution holiday from their pension scheme. If such a request is received, both the rules of their scheme and the member's employment contract (e.g. in relation to compulsory membership) will need to be considered.

DB SCHEME

The issues for DB schemes in relation to employee contributions are the same as set out above for DC schemes. In contrast, in a DB scheme, the rate of employer contribution is determined by the most recent (usually three yearly) actuarial valuation. However, from the member's perspective, the question is whether there is ongoing accrual of benefit and broadly this will depend on whether a member remains in pensionable service or not.

1. What are the pensions implications where a member is being paid while on COVID-19 related leave?
   If the member is on fully paid leave then it is likely that they will also remain in pensionable service and they continue to accrue benefit in the normal way.
2. What are the pensions implications where a member is not being paid for COVID-19 related reasons?
   Again, assuming that the non-payment of salary is permissible from an employment law perspective, then whether or not the member is in pensionable service will likely depend on whether or not they are still in the employment of their employer. Given that the covid-19 leave is likely to be short-lived, we would note that the administrative burden (and complexity) of stopping and starting pensionable service may be greater than the cost of simply deeming the member to have remained in pensionable service (if that is permissible under the scheme rules).
3. What are the pension implications where a member is partly paid during temporary leave?
   If the member is partly paid, then there are two options in a DB scheme, the member may be treated as either (i) in partial pensionable service (e.g. three-day week) at the full time employment salary or (ii) on reduced pay for full time employment service. The same caution in relation to administrative burden and complexity also applies to this approach particularly as the arrangements are being temporarily imposed on employees rather than the employee choosing to go part time.

OTHER CONSIDERATIONS

1. Insured benefits
   Trustees should consider whether death in service benefits provided to members through the scheme will continue during a period of COVID-19 related leave. This will generally turn on the employment status of the member and so will require communication with the employer. Insured death benefits are generally insured at the salary levels returned to the insurer at the annual renewal, accordingly there should be no difficulty in cover continuing at the salary level for which the premium has been paid, if cover is to continue in full. Where renewals occur during the COVID-19 period, salaries will need to be returned at the previous full rates to maintain the cover.

   Whatever decision is taken in relation to insured benefits, the policy documentation relating to such benefits should be reviewed and the insurer should be contacted to confirm that the chosen level of insured benefits can be maintained under the policy terms during the COVID-19 period and that there is no cover exclusion for pandemics.
2. Protective leave
   The equal treatment provisions under section 81 of the Pensions Act as they relate to qualifying maternity leave and qualifying family leave should be borne in mind where a member takes: early maternity leave due to the risk associated with COVID-19; or family leave to care for a sick relative.
3. Trustee signing mandates
   In circumstances where many are now working remotely, trustees should consider the practicalities around signing mandates. Generally, two trustees will be required to sign for matters such as investment instructions. Where two trustees are not statutorily required to sign (e.g. annual accounts and trustee annual report), signing mandates may be updated, for example, to allow for approval by the trustees by email and signature by a nominated individual in the scheme administrator.
4. Transfers out of DB schemes
   Given current market volatility, trustees should consider whether it is appropriate to continue non-statutory transfers out of their DB scheme and whether to include health warnings on statutory transfer value calculations. Accurate scheme valuations may be difficult to determine given the current market uncertainty and the risk is that members could transfer out of schemes to their disadvantage. It has been suggested by pensions commentators, most recently former UK Pensions Minister Ros Altmann, that delaying transfers out for a period of up to 6 months would be in members' interests and would help stabilise schemes.

CONCLUSION

The outbreak of COVID-19 has impacted Irish businesses and employees in new and unprecedented ways. As employers and employees grapple with the changes COVID-19 has brought, the pensions impact of those changes may be overlooked. It would be prudent for trustees and employers to review scheme provisions based on the employment changes being introduced to ensure that any actions taken are in accordance with those provisions.