

# Pension Withdrawal Liability Legal Overview

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# **Withdrawal Liability**

## ***General Overview***

- In 1980, the Employee Retirement Income Security Act ("ERISA") was amended by the Multiemployer Pension Plan Amendments Act (MPPAA) to require assessment of withdrawal liability to employers that completely or partially terminate participation in multiemployer pension plans after September 26, 1980.
- Such withdrawing employers must fund a proportional share of the plan's unfunded vested benefits by making withdrawal liability payments to the plan.

# **Withdrawal Liability**

## ***Construction Industry Defined***

- Substantially all of the employees with respect to whom the employer has an obligation to contribute under the plan perform work in the building and construction industry; and
- The plan primarily covers employees in the building and construction industry.

# **Withdrawal Liability**

## ***Construction Industry Rule***

### ***Complete Withdrawal***

- The employer ceases to have an obligation to contribute under the plan; and
  - Continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or
  - Resumes such work within five (5) years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of resumption.

# **Withdrawal Liability**

## ***Construction Industry Rule***

### ***Partial Withdrawal***

- “ There is a partial withdrawal by an employer from a plan on the last day of a plan year if for such plan year
  - There is a 70% contribution decline, or
  - There is a partial cessation of the employer’s contribution obligation.
- “ A construction industry employer is liable for a partial withdrawal only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.

# **Withdrawal Liability**

## ***Construction Industry***

### ***Calculation of Liability***

- “ Construction industry pension plans use the presumptive method for allocating unfunded vested benefits (29 CFR Sec. 4211.3(a)).

# **Withdrawal Liability**

## ***Construction Industry***

### ***Calculation of Liability***

- “ The withdrawing employer is liable for its proportional share of UVBs, determined as of the end of the plan year just prior to the withdrawal based on the sum of the unamortized balances of:
  - “ UVBs at end of plan year before 9/26/80 (initial pool),
  - “ Change in UVBs for each subsequent plan year to the end of the plan year immediately before withdrawal (new pools), and
  - “ Reallocated withdrawal liability amounts that were neither assessable nor collectible.
- Each yearly pool is phased out over 20 years as the unamortized balance is determined by applying a 5% reduction each year from its original amount.

# **Withdrawal Liability**

## ***Construction Industry***

### ***Calculation of Liability***

- The employer's portion is based on the ratio of its contributions vs. total employer contributions for the 5-year period ending with date each pool is established.
- Base amount of liability is adjusted for de minimis reduction (e.g., \$50,000).
- Payments are limited to 20 years.

# **Withdrawal Liability**

## ***Collecting from Withdrawn Employers***

- “ After the employer withdraws, the plan serves notice to the employer of:
  - ” The amount of the liability,
  - ” The schedule for liability payments, and
  - ” Demand for payment.

# **Withdrawal Liability**

## ***Collecting from Withdrawn Employers***

- “ Within 90 days of the plan’s notice, the employer:
  - ” may request review by the plan of its determination,
  - ” Identify any inaccuracy, and
  - ” Furnish additional relevant information to the plan.

# **Withdrawal Liability**

## ***Collecting from Withdrawn Employers***

- “ After the plan reviews the employer’s request, the plan must notify the employer:
  - ” Of its decision,
  - ” The basis for the decision, and
  - ” The reasons for any change in its determination.

# **Withdrawal Liability**

## ***Collecting from Withdrawn Employers***

- “ Withdrawal liability is payable by the employer in accordance with the schedule set by the plan beginning no later than sixty (60) days after the date of the plan’s demand notwithstanding any request for review or appeal.

# **Withdrawal Liability**

## ***Resolution of Disputes***

- “ Disputes are resolved through arbitration
- “ Either party may initiate arbitration within a 60-day period after the earlier of:
  - “ The date of the plan’s notice to the employer of its decision on review, or
  - “ 120 days after the employer’s request for review.
- “ Payments shall be made by the employer until the arbitrator issues his final decision. If the employer fails to make timely payment in accordance with the decision, it will be treated as a delinquent employer.

# **Withdrawal Liability**

## ***Resolution of Disputes***

- “ The arbitrator may award costs and reasonable attorney’s fees.
- “ The plan’s determination is presumed correct unless the employer shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous.

# **Withdrawal Liability**

## ***Resolution of Disputes***

- “ If no arbitration is initiated, the amounts demanded by the plan shall be due and owing.
- “ The plan sponsor may bring an action in a State or Federal court of competent jurisdiction for collection.
- “ Upon completion of the arbitration, if any, an action may be filed within thirty (30) days of the award in the U.S. District Court to enforce, vacate or modify the award.
- “ The award is presumed correct, rebuttable only by a clear preponderance of the evidence.

# CONCLUSION

- Questions



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