Withdrawal Liability Calculations for Multiemployer Pension Plans: What Employers Must Know About Financial Exposure

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"Withdrawal liability" blindsides many employers when they stop contributing to collectively bargained pension plans. Multiemployer plans have used different calculations for years that inflate the withdrawal liability they assess, further increasing the employer's already significant financial exposure. While arbitrators and courts have started to reject some of these tactics, pension funds continue to use them, and a federal agency has taken efforts to legitimize a plan's use of actuarial assumptions that are highly prejudicial to the employer. Here's what employers need to know and how you can limit your exposure.

Withdrawal Liability Calculations and the "Segal Blend" Approach

Withdrawal liability is calculated as the difference between the *present value* of the employer's allocable share of a plan's vested benefits and the current value of plan assets (the more vested benefits exceed assets, the greater the withdrawal liability). The interest rates and actuarial assumptions used to determine the present value of vested benefits significantly impact this calculation and the amount assessed on the employer.

Many multiemployer pension plans calculate their unfunded vested benefits – and thus the amount of withdrawal liability to be assessed – by using the "Segal Blend" (or a variation of it). This approach was named after the actuarial firm that developed it. The Segal Blend approach combines low interest rates developed for purchase of annuities when a pension plan terminates with the rates the plan actuary assumes will reflect the return on the plan's assets in the future.

This approach often results in a substantial overstatement of the actual underfunded position of the plan, because it uses an interest rate that has historically been several points below the plans' expected return. In some cases, this can result in millions of dollars in extra withdrawal liability.

Many Courts Reject the Segal Blend

For many years after the 1980 advent of withdrawal liability, the complexity of the statute and the fog surrounding actuarial methodology shielded the Segal Blend from challenge. But that changed in 2018 when a federal judge in the Southern District of New York ruled that use of the Segal Blend was "improper" under Section 4213(a)(1) of the Employee Retirement Income Security Act (ERISA). That section provides that for purposes of calculating withdrawal liability, actuarial assumptions and methods must "in the aggregate [be] reasonable (taking into account the experience of the plan and reasonable expectations) and which in combination offer the actuary's best estimate of anticipated experience under the plan."

The court's problem with the Segal Blend was that it used interest rates appropriate for annuity investments the fund didn't have and had no intention of purchasing. These rates did not reflect "the actuary's best estimate of anticipated experience under the plan." While a federal judge in the District Court for New Jersey issued an opinion several months later upholding the Segal Blend, multiple federal appeals courts rejected this type of methodology in the ensuing years. For example, the 6th U.S. Circuit Court of Appeals has rejected the Segal Blend, and the 9th Circuit and the D.C. Circuit have rejected use of methodologies similar to the Segal Blend.

Segal, as well as several other actuarial firms catering to multiemployer pension plans, and some of the largest multiemployer plans in the country sought a rehearing from the D.C. Circuit Court of Appeals. When that failed, they unsuccessfully petitioned the Supreme Court to take the case. In early 2024, the Segal Blend was again expressly rejected by a judge in the Southern District of New York, while a similar methodology was rejected by a second judge of the same court.

Multiemployer Plans Continue Using It Despite Court Rulings

Despite courts rejecting the Segal Blend, multiemployer plans around the country continue to use it. Additionally, the Pension Benefit Guaranty Corporation (PBGC), a federal government agency that guarantees multiemployer plan benefits, issued a proposed regulation in October 2022 supporting the Segal Blend and similar methodologies. The PBGC might be incentivized to take this position, which enables multiemployer plans to collect more money, since the agency is directly responsible for millions of individuals' benefits in failed pension plans.

What Can Employers Do?

Employers need to know that even though withdrawal liability laws are challenging, mounting defenses can limit exposure. The Segal Blend is just one of several approaches multiemployer plans routinely take to enhance collections, warranting review when a withdrawal takes place. And as the cases above attest, even though a fund makes a withdrawal liability demand, the amounts claimed are not always justified. Review of pension fund demands should always be undertaken to ensure that amounts claimed are actually owing.

Further, PBGC's proposed rule could be challenged by employers. Proposed regulations carry no weight with courts, and the Supreme Court's *Loper Bright* decision opened the door for new challenges to agency actions, including even final regulations.

Conclusion

If you have questions about defending withdrawal liability claims or reviewing pension fund demands, feel free to reach out to your Fisher Phillips attorney, the author of this Insight, or any attorney in our Employee Benefits and Tax Practice Group. We will continue to provide tips, guidance, and updates on employee benefits and other workplace law topics, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox.

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