Labor Relations Bulletin
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Withdrawal Liability 101

Multiemployer pension plans play a vital role in the retirement security of workers across numerous industries, including electrical construction. However, financial obligations tied to withdrawal liability can pose significant risks to participating employers. A robust understanding of withdrawal liability is essential for contractors to navigate this intricate landscape, safeguard their operations, and ensure long-term compliance with complex rules and regulations.

Understanding Withdrawal Liability

Withdrawal liability occurs when an employer ceases participation in a multiemployer pension plan, thereby inheriting a proportional share of the plan's unfunded vested benefits. This liability, as codified under the Employee Retirement Income Security Act (ERISA) and enforced by the Pension Benefit Guaranty Corporation (PBGC), ensures the continued solvency of the pension plan for remaining participants.

There are multiple types of withdrawal liability that can occur, with a "complete" or "partial" withdrawal being the most common:

- Complete Withdrawal: A complete withdrawal occurs when the employer (including all controlled group members) permanently ceases to have an obligation to contribute to the plan or permanently ceases all covered operations under the plan. Special withdrawal liability rules apply to plans and employers in certain industries, such as building and construction. ERISA §4203.

- Partial Withdrawal: Partial withdrawal occurs when there is a decline of 70% or more in employer's contribution base units (CBUs), or there is a partial cessation of the employer's obligation to contribute. The CBU test determines how employer contributions are measured, for example, hours worked, and a formulation from ERISA that looks at employer CBUs over a period of time. ERISA §4205, §4206 and §4208.

There are also special rules for certain industries (ERISA Secs. 4203, 4205, 4211, 4216, 4219, and 4220) recognize the complexity and nuance in those industries including building and construction.

How Withdrawal Liability is Calculated

Withdrawal liability is generally calculated based on an employer's share of the multiemployer plan's **unfunded vested benefits (UVBs)**. The UVBS represents the difference between the plan's obligations to participants and the plans' available assets. The amount of UVB's also depends on the date that the plan's assets and liabilities are valued, the actuarial assumptions and methods used to value the assets and benefits, and the allocation method chosen by the plan. When an employer withdraws, the plan allocates a proportionate share of these liabilities to the withdrawing employer, and the employer must generally begin paying its withdrawal liability within sixty (60) days after receiving a demand for payment from the plan.

Withdrawal Liability in the Electrical Construction Industry

Building & Construction Industry Exception

The Building & Construction Industry Exception provides critical relief for employers in the construction sector contributing to multi-employer pension plans. To qualify for the exception, two criteria must be met:

1. The multi-employer pension plan must primarily cover employees working in the building and construction industry.

2. Substantially all employees for whom the employer is obligated to contribute must perform work in the building and construction industry.

Under this exception, an employer is not considered withdrawn unless its obligation to contribute permanently ceases and, within five years, it performs work of the type for which contributions were previously required on a non-contributory basis. In simpler terms, withdrawal liability is triggered only if the employer's contribution obligations end, but the employer continues to perform covered work without contributing to the plan.

What Happens if an Employer Doesn't Pay?

If an employer fails to pay their withdrawal liability, there can be several legal and financial consequences:

1. Acceleration of the full amount: Under ERISA, generally, employers may make periodic installment payments towards their withdrawal liability. If they fail to make their required payment, the entire unpaid amount may become due immediately (ERISA §4219(c)(5)).

2. The pension plan may file a lawsuit in federal court to collect the unpaid withdrawal liability, often resulting in required payments of the liability, interests, and any associated legal fees.

3. Interest and penalties may be assessed on the amount of unpaid withdrawal liability, and liens may be placed on an employer's assets to secure the debts.

Strategies for Navigating Withdrawal Liability

Addressing withdrawal liability requires strategic foresight and collaboration with both labor and management. Chapters and Employers can take the following steps to help mitigate risks:

1. Proactive Engagement with Trustees – Regular dialogue with pension trustees allows stakeholders to stay informed about plan health and anticipate funding shortfalls.

2. Legal and Financial Guidance – Trustees should enlist the right professionals, versed in ERISA regulations and PBGC protocols, to devise effective liability mitigation strategies.

3. Maintain Awareness – Review ERISA provisions, PBGC updates, and understand local plan-specific rules and regulations to stay informed about plans that may affect you.

Through collective effort and strategic planning, contributing employers can secure a sustainable future for their multi-employer pension plans and the greater electrical construction industry,