

**REFRESHER ON PENSION PLANS
REGULATORY ENVIRONMENT**

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I. Introduction

Below is a general overview of the laws and agencies which govern multiemployer pension plans and government filing requirements. A multiemployer pension plan is a plan where more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements.

As evident from the general discussion below, aspects of a multiemployer pension plans are governed by more than one law. For example, requirements for participation, vesting and accrual of benefits are set forth in both Title I of ERISA and Sections 410 and 411 of the Internal Revenue Code.

II. Laws which Govern Multiemployer Pensions Plans

A. Taft-Hartley Act, 29 USCA § 186 et. seq.

Section 302 of the Labor-Management Relations Act, more popularly known as the Taft-Hartley Act, regulates multiemployer benefit plans, including multiemployer pension plans. Specifically, Section 302 of the Taft-Hartley Act regulates any employee benefit plan involving use of employee contributions if a union or union representative has any authority in administering the plan or management of the plan's assets. 29 U.S.C. § 186(c). Section 302 of the Taft Hartley Act does not apply if an employee benefits plan is maintained or administered exclusively by employers or maintained and administered exclusively by the union without the use of employer funds. Employee Benefits Law, ABA Section of Labor and Employment Law (1991)

Section 302 of the Taft-Hartley Act makes it unlawful for an employer to pay or for a union or union representative to receive anything of value except if payments are made to a trust fund established by the union to provide employee benefits. 29 U.S.C. § 186(c). Joint labor-management trusts must be established and operated under Section 302(c)(5) of the Taft-Hartley Act. 29 U.S.C. § 186(c).

The Taft-Hartley Act requires the following for multiemployer plans:

1. Payments must be held in trust for the sole and exclusive benefit of eligible employees, their families and dependents;
2. A joint board of trustees where management and labor are equally represented must administer the fund;
3. An audit by an independent accountant must be made;
4. An impartial arbitrator must be provided to arbitrate disagreements between the trustees;
5. A written agreement; and
6. The purposes of the trust are limited to certain specific functions.

29 U.S.C. § 186(c).

Failure to comply with Taft-Hartley renders the parties liable to criminal sanctions and makes the trust itself illegal.

B. Employment Retirement Income Security Act (ERISA)

ERISA sets forth provisions relating to the administration, reporting, fiduciary responsibility, enforcement, participation, vesting, funding and termination insurance for pensions plans. Many of ERISA's general provisions apply equally to multiemployer and single-employer plans. Additionally, ERISA was amended in 1980 by the Multiemployer Pension Plan Amendment Act (MPPAA) which provides special rules and addresses special problems of multiemployer pension plans.

1. MPPAA amended ERISA to provide specific rules regarding multiemployer pension plans.

The MPPAA was enacted in order to protect participants against plan losses. The MPPAA sets forth specific requirements for participation, vesting, funding and accrual of benefits for multiemployer pension plans.

Additionally the MPPAA made changes in the termination insurance provisions of ERISA that apply to multiemployer pension plans. Under the changes instituted by the MPPAA, employers of multiemployer pension plans are now required to pay their share of the plan's unfunded liabilities whether they stay with the plan or not. 29 U.S.C. §4202; Employee Benefits Handbook, Jeffery Mamasky ed. (1997). Because employers who leave the plan incur withdrawal liability, employers no longer have an incentive to withdraw in order to avoid paying their share, and remaining employers no

longer need to worry about being responsible for an increasing share of the plan's liabilities. Employee Benefits Handbook, supra

The MPPAA added provisions governing mergers and transfers between multiemployer pension plans and multiemployer and single-employer pension plans. Certain requirements must be satisfied before a multiemployer pension plan can merge with or transfer assets or liabilities to another multiemployer pension plan or single-employee pension plan. 29 U.S.C. §§4231; Employee Benefits Handbook, supra. The MPPAA also made important changes regarding the termination of multiemployer pension plans. The MPAA amended the definition of termination and modified the consequences resulting from termination. 29 U.S.C. §4041A

The MPPAA also made changes to the PBGC which manages the pension plan termination insurance program. Under ERISA's pension plan termination insurance program, the PBGC guarantees a portion of the pension benefit of participants in defined benefit multiemployer pension plans even if the plan terminates with insufficient funds to make payments. 29 U.S.C. § 1322. In order to provide these payment, PBGC collects annual premiums from each multiemployer pension plan on behalf of each individual participating in the plan that year.

The MPPAA also enhanced the ability of jointly administered plans to collect delinquent employer contributions. A federal cause of action was established to enforce a contribution obligation. Federal jurisdiction, however, is limited to the right of a plan to enforce contribution rights established under a collective bargaining agreement.

2. Fiduciary Responsibilities established under ERISA

Trustees of multiemployer pension funds have an ERISA fiduciary duty and authority to collect employer contributions, keep appropriate accounts, and enforce benefit claims. In fact, the fiduciary responsibilities established at Section 404 of Title I of ERISA applies to virtually all types of employee benefit plans covered by ERISA. Fiduciary responsibilities arise when a person is a fiduciary of a plan. A person is a fiduciary of a plan to the extent the person (1) exercises any discretionary authority or responsibility in the administration of the plan, (2) exercises any authority or control concerning management and disposition of plan assets, or (3) renders advice with respect to the plan's assets. 20 U.S.C. 1002(21)(A). Employee Benefits Law, supra.

Section 404 establishes the following four general standards of conduct required of fiduciaries in the execution of their duties to the plan:

- a. The “Exclusive Benefit Rule” requiring plan fiduciaries in discharging their duties to act for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan;
- b. The “Prudence Rule” requiring a fiduciary to act with the care, skill, prudence and diligence that a prudent man acting in like capacity and familiar with such matters would use the circumstances;
- c. Diversification requiring fiduciaries to diversify the investments of the plan in order to minimize the risk of large losses; and
- d. Requiring fiduciaries to act in accordance with plan documents insofar as the documents are consistent with the provisions of ERISA. 29 U.S.C. §1104

3. Prohibited Transactions under ERISA

In addition to affirmative fiduciary obligations imposed on the plan’s fiduciaries, ERISA sets forth specific prohibitions on transactions involving plan fiduciaries. There are two generic types of prohibited transactions: (1) transactions between a plan and a category of persons defined as “parties in interest” and (2) transactions which involve actual or potential

conflicts of interest or self dealing by plan fiduciaries. 20 U.S.C. § 1106. The prohibitions of Section 406, however, are subject to statutory or administrative exemptions. 29 U.S.C. § 1108.

4. ERISA Bonding Requirements

Section 412 of ERISA requires every fiduciary or every administrator, officer and employee who “handles” plan funds or other property to be bonded. 29 U.S.C. § 1112. “Handling” occurs when the plan administrator, officer or employee’s duties or activities are such that there is a risk that the property or funds could be lost in the event of fraud or dishonesty on the part of such person acting alone or in collusion. 29 CFR 2580.412-6(a). The bond must be at least 10 percent of the money or other property of the plan handled during the preceding year, not less than \$1,000 and not to exceed \$500,000. The bond, if purchased with plan assets may not be obtained from an insurer or bonding agent that is a party in interest. However, an insurance company that merely provides other insurance to the plan may provide the bond.

5. ERISA Reporting Requirements

ERISA requires certain reporting by plan administrators to the Internal Revenue Service, Department of Labor and the Pension Guaranty Corporation.

C. Internal Revenue Code

The Internal Revenue Code sets forth certain qualifications which a multiemployer pension plan must meet in order to receive tax-exempt status. The qualification rules for a multiemployer pension plan differ from the qualification requirements for a single-employer pension plan with regard to the requirements for participation, discrimination, vesting and exclusivity of benefits. 26 U.S.C. § 401.

D. Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401-531.

The Labor Management Reporting and Disclosure Act (LMRDA), commonly known as the Landrum-Griffin Act, imposed regulations on union activities. Section 501 of the LMRDA requires officials of a labor organization to hold property solely for the benefit of the union and its members. 20 U.S.C. § 501. While LMRDA relates only to the conduct of union officials, courts have imposed those duties on union officials acting in their capacities as employee benefit plan trustees. Hood v. Journeymen Barbers, 454 F.2d 1354 (7th Cir. 1972). Additionally, Section 431 of LMRDA imposed a duty on every employee organization to file an annual report with the Secretary of Labor indicating whether it has any employee benefit plans. 29 U.S.C. § 431(a).

E. State Laws

State laws also play a part in the operation and administration of multiemployer pension plans. For example, the determination of whether a trust has been established for purposes of the requirements of the Taft-Hartley Act is governed by state law. Noel Levin, Labor Management Benefit Funds (1994). Additionally, prior to the enactment of ERISA, common law fiduciary duties and remedies governed the conduct of plan trustees. These common law theories may still have an impact on lawsuits involving breach of fiduciary duty. Additionally multiemployer pension plans must make sure that elements of state trust law are satisfied.

F. Title VII of the Civil Rights Act

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to discriminate against an individual with respect to the person's "compensation, terms, conditions, or privileges of employment" because of the person's sex. 29 U.S.C. § 2000e-2(a)(1). Title VII applies to employers with fifteen or more employees. 42 U.S.C. § 2000e-2(b). Title VII dictates that an employer cannot discriminate when determining an employee's monthly retirement benefits.

G. Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et. seq.

The Uniformed Services Employment and Reemployment Rights Act applies to all employee benefit plans or a right provided under any Federal or State law governing pensions benefits for governmental

employees. The Act entitles a person to reemployment rights if (1) the person gives advance notice of military service to the employer; (2) the cumulative lengths of all absences for military services does not exceed five years; and (3) upon conclusion of military service, the person reports to work. If these criteria are satisfied, the person is entitled to seniority, health insurance and pension benefits. Specifically, pension benefits must continue to accrue as if the individual were still employed. Military service does not constitute a break in service, and each period of military service is deemed service with the employer for purposes of nonforfeitability and benefit accrual. Additionally employers are responsible for contributing to the plan to provide benefits accrued during military service.

H. Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et. seq.

The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination against employees over the age of forty and applies to private and public employer who employ over twenty employees for each working day in each of twenty or more calendar weeks. The ADEA affects the content of early retirement incentives, plan participation requirements, benefit treatment for individuals who work past normal retirement age and the relationship between severance plans and pension plans. ERISA does not preempt the ADEA, and the ADEA and ERISA must be read together.

III. Conclusion

Since the aspects of multiemployer pension plan are governed by more than one law, there are numerous federal agencies sharing responsibility for administration of the laws governing multiemployer pension plans. These include the U.S. Departments of Labor and Treasury, the Pension Benefit Guaranty Corporation, the Federal Accounting Standards Board, the Equal Employment Opportunity Commission and the Social Security Administration. In addressing issues affecting multiemployer pension plans, one should always bear in mind these numerous statutory schemes and agencies responsible for enforcing such laws.