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“CRomnibus” Spending Bill Makes Significant Changes to Law Governing Multiemployer Pension Plans

By Susan K. Hoffman and Kevin L. Wright

The Multiemployer Pension Reform Act of 2014, part of the trillion-dollar government funding legislation (the so-called “CRomnibus” bill) approved by the House of Representatives on December 11, the Senate on December 13, and signed by President Obama on December 16, makes significant changes to the law governing multiemployer pension plans. Some of the most important changes are summarized below.

Enabling Deeply Troubled Plans to Suspend or Reduce Benefits

For the first time since the Employee Retirement Income Security Act’s (ERISA) enactment in 1974, the law now permits certain multiemployer pension plans that are in “critical and declining status” to reduce accrued and vested benefits, including benefits in pay status for participants under age 75. A limited suspension is permitted for participants between ages 75 and 80. There are numerous conditions on the ability of a fund to suspend or reduce benefits:

- For plans with 10,000 or more participants, the plan’s board of trustees must select a participant in pay status to act as a retiree representative whose role is to advocate for the retired and deferred vested participants throughout the suspension process. The representative is provided expenses, legal and actuarial support from the plan. This representative is not a fiduciary, unless he or she is also a trustee of the plan.
- The plan’s actuary must conclude that, with the proposed suspension, the plan will avoid insolvency, and the board of trustees must determine that the plan will become insolvent without the suspension, and that all other reasonable measures to avoid insolvency have been taken.
- The monthly benefit of any participant may not be reduced below 110% of the amount guaranteed by the Pension Benefit Guaranty Corporation (PBGC).¹

¹ PBGC guarantees are based on the amount of time an employee works to earn a given benefit. The guarantee is 100% for the first \$11 of monthly benefit an individual earns times years of service, and then 75% of the next \$33 of monthly benefit. Thus, PBGC’s maximum guaranteed monthly benefit is \$35.75 per year of service (100% of \$11 plus 75% of the next \$33). So, for example, the maximum guaranteed benefit for a participant with 20 years of service would be \$715 per month.

- A plan wishing to reduce or suspend benefits pursuant to the statute must provide notice to the participants and the contributing employers, and must apply to the Department of the Treasury for approval and, if approved, the benefit reduction or suspension must be submitted to the plan's participants for ratification. Even if the participants reject the proposed reduction or suspension, the Secretary of the Treasury may permit the requested suspension, or a modification thereof, to take effect for certain "systemically important" plans – those that pose the greatest financial exposure to the PBGC. A decision to deny or approve a suspension of benefits is subject to limited judicial review.

The financial impact of benefit suspensions are disregarded for purposes of calculating an employers' withdrawal liability, unless the withdrawal occurs more than ten years after the effective date of the benefit suspension.

Clarification of Rules Regarding Withdrawal Liability Calculations

Since passage of the Pension Protection Act of 2006 (PPA), it had been unclear whether surcharges required for employers contributing to plans in critical status, and increased contributions required pursuant to funding improvement and rehabilitation plans, were included in determining a withdrawing employer's "annual payment" amount. The new law makes clear that neither surcharges nor contribution increases required by funding improvement or rehabilitation plans are to be considered (i) to determine a withdrawing employer's allocable share of unfunded vested benefits or (ii) in calculating a withdrawing employer's payment amount. This provision does not apply to increases in contributions other than those required by a funding improvement or rehabilitation plan (for example, contribution increases to provide increased benefits). These changes go into effect for contribution rate increases required during plan years beginning after December 31, 2014.

Other Significant Actions

The legislation makes many other changes to the law governing multiemployer pension plans. Some of these include:

- **PPA Sunset Repealed.** Under prior law, many provisions of the PPA would have sunset as of December 31, 2014. Those sunset provisions have been repealed.
- **PBGC Premium Increase.** The new Act increases PBGC premiums for multiemployer plans to \$26 per participant in the first plan year beginning after December 31, 2014. Thereafter, premium increases are indexed based on the national average wage index.
- **Enhanced Partition Rules.** The Act completely revises PBGC standards and procedures for the partition of multiemployer pension plans.
- **Enhanced Disclosure Requirements.** The Act enhances the required disclosure of multiemployer defined benefit pension plan information to include the following:
 - The current plan document;
 - The latest summary plan description;
 - The current trust agreement;
 - Any participation agreement governing an employer's participation in a plan;
 - The plan's annual report for any plan year;
 - The plan's annual funding notice for any plan year;
 - Audited financial statements for the plan for any plan year; and
 - Copies of the plan's funding improvement or rehabilitation plan, and the contribution schedules applicable to such plans.

These disclosures are in addition to those already required, such as financial reports that have been in the plan's possession for at least 30 days.

- **Option to Elect Critical Status.** The Act enables trustees of plans that are projected to be in critical status within the next five years to elect to be in critical status in the current year.

While many of these changes are welcomed by employers, unions and multiemployer plans alike, their long-term implications are far from clear. Please contact us if you would like to discuss the legislation and its impact on your company and the plans in which it participates.

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