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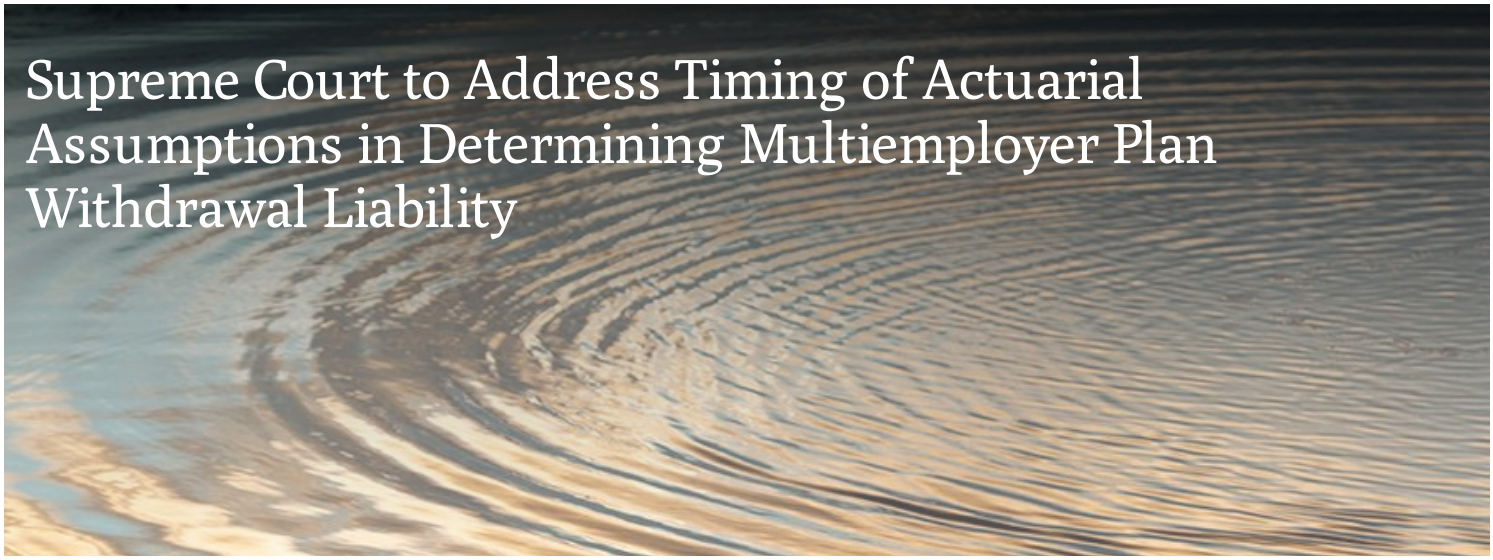
BLOG



Supreme Court to Address Timing of Actuarial Assumptions in Determining Multiemployer Plan Withdrawal Liability

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On June 30, 2025, the Supreme Court granted certiorari in *M & K Employee Solutions, LLC, et al. v. Trustees of the IAM National Pension Fund*, No. 23-1209. This case will resolve a circuit split over when assumptions used to determine withdrawal liability must be adopted. Through an amended order, the Court will address:

Whether 29 U. S. C. § 1391's instruction to compute withdrawal liability "as of the end of the plan year" requires the plan to base the computation on the actuarial assumptions most recently adopted before the end of the year, or allows the plan to use different actuarial assumptions that were adopted after, but based on information available as of, the end of the year.[1]

BACKGROUND

Multiemployer plans are pension plans established pursuant to a collective bargaining agreement to which more than one employer contributes. If an employer decides to withdraw from a multiemployer plan that is underfunded, they must pay the plan a "withdrawal liability."

An employer's withdrawal liability is their share of the plan's unfunded vested benefits (UVBs) as of the end of the plan year preceding the plan year in which the employer withdraws (the measurement date).[2] UVBs are the present value of the plan's vested benefits minus the current value of the plan's assets.

Plan sponsors along with the plan actuary are responsible for calculating withdrawal liability. When calculating the present value of UVBs, plan actuaries must make several assumptions—most notably an interest rate assumption (sometimes called the discount rate assumption). The interest rate is used to discount future benefit payments to their present value, and even a small change in the rate can have a considerable impact on the present value of UVBs. An increase in the interest rate assumption decreases UVBs as well as an employer's withdrawal liability.

ERISA requires plan actuaries to use reasonable actuarial assumptions that offer the actuary's best estimate or actuarial assumptions and methods set forth in regulations by the Pension Benefit Guaranty Corporation (PBGC)[3] when determining an employer's withdrawal liability.[4]

CIRCUIT SPLIT

D.C. CIRCUIT

In *Trustees of the IAM National Pension Fund v. M & K Employee Solutions*, the D.C. Circuit held that the plan's actuary was free to calculate the withdrawing employer's liability using assumptions adopted after the measurement date so long as those assumptions were based on information that was available "as of" the measurement date.[5]

The D.C. Circuit reasoned that allowing the plan actuary to adopt assumptions after the measurement date allows the actuary to take plan experience into account up until the measurement date. The D.C. Circuit explained that such a result is in alignment with ERISA's requirement that the assumptions be the actuary's "best estimate"[6] and serves ERISA's overall purpose of protecting plan participants and their beneficiaries. The change increased the company's liability from $1.8 million to $6.2 million, approximately.

SECOND CIRCUIT

In *The National Retirement Fund v. Metz Culinary Management, Inc.*, the Second Circuit held that assumptions used for determining withdrawal liability must be those assumptions adopted as of the measurement date.[7]

The Second Circuit explained that the legislative history of ERISA section 4214,[8] which prohibits retroactive application of plan rules or amendments without employer consent and notice, supports the conclusion that actuarial assumptions relating to withdrawal liability should not be applied retroactively.[9] Further, the Second Circuit stated that allowing plans to adopt interest rate assumptions after the valuation date "would create significant opportunity for manipulation and bias."[10]

SOLICITOR GENERAL'S BRIEF

At the Court's request and with PBGC's support, the Solicitor General submitted a brief in support of granting certiorari to resolve the "clear conflict" concerning approximately 1,400 multiemployer plans covering about 11 million workers. The Solicitor General encouraged the Court to affirm the D.C. Circuit's decision. The Solicitor General argued that actuarial assumptions are not plan rules or amendments subject to the prohibition on retroactive application and should not be treated similarly.[11] Further, the Solicitor General explained that the Second Circuit's concern regarding manipulation and bias was overstated.[12]

KEY TAKEAWAYS

With rates likely to fall (and always subject to fluctuation), employers considering a withdrawal are concerned about the certainty of their withdrawal liability. If the Court affirms the D.C. Circuit, it may result in less predictable cost estimates for employers. Employers have the right to request estimates of their withdrawal liability annually, but the usefulness of those estimates in making business decisions is diminished when plans and actuaries are able to retroactively change assumptions.

Employers considering a withdrawal from a multiemployer plan should review how their plan sets actuarial assumptions and consult with their own experts to understand the potential impact of the Supreme Court's forthcoming decision.

To learn more about how this case and other important ERISA litigation trends may impact your company's retirement plans, contact your Winston & Strawn relationship attorney or a member of Winston's Employee Benefits and Executive Compensation team.

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[1] Supreme Court of the United States, Granted & Noted List, October Term 2025 Cases for Argument as of July 3, 2025.

[2] 29 U.S.C. § 1391.

[3] PBGC proposed regulations on October 13, 2022, addressing actuarial assumptions for determining withdrawal liability (*see* 87 FR 62316). These proposed rules do not address the question presented and have not yet been finalized.

[4] 29 U.S.C. § 1393.

[5] *Trustees of the IAM National Pension Fund*, 92 F.4th 316 (Feb. 9, 2024).

[6] 29 U.S.C. § 1393(a)(1).

[7] *The National Retirement Fund*, 946 F.3d 146 (Jan 2, 2020).

[8] 29 U.S.C. § 1394.

[9] *The National Retirement Fund*, 946 F.3d at 151 (the Second Circuit acknowledged that 29 U.S.C. § 1394 does not define "plan rules and amendments").

[10] *Id*.

[11] Brief amicus curiae of the United States, No. 23-1209.

[12] *Id*. at 14.

4 Min Read

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