



Request Annual Estimate of Multiemployer Pension Plan Withdrawal Liability

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An employer which participates in an underfunded multiemployer pension plan should request an estimate of withdrawal liability on an annual basis so it is aware of the amount of any potential withdrawal liability.

Many employers are reluctant to request an estimate, especially if they are considering selling the business, perhaps because they are trying to keep the negotiations quiet. If the employer requested an estimate every year or two, then suspicion would be less likely, and the employer would be informed of the potential liability on an ongoing basis.

A multiemployer benefit plan is a plan to which two or more employers contribute under the terms of one of more collective bargaining agreements ("CBA"). These plans are sometimes referred to as Taft-Hartley plans because amendments to the National Labor Relations Act in the Labor-Management Relations Act of 1947 (referred to as the Taft-Hartley Act) allow a group of employers to contribute to a joint trust fund for employees and their dependents. Multiemployer plans are administered by a board comprised of union and employer representatives, and most, but not all, are defined benefit pension plans.

When a participating employer stops contributing to, or no longer has a CBA obligation to contribute to, a multiemployer (union) pension plan that is underfunded, the employer is likely to be subject to "withdrawal liability" under ERISA. ERISA imposes an exit penalty, known as "withdrawal liability," on employers who withdraw from an underfunded plan by allocating a portion of the unfunded vested benefits in the plan to a participating employer when it withdraws from the plan.

[Request an annual estimate of withdrawal liability](#)

Employers have the right to request an annual written estimate of withdrawal liability from any multiemployer pension plan in which they participate. The plan may charge a reasonable fee for the request and may take up to 180 days to comply with the request. ERISA allows the Department of Labor to issue regulations defining a “reasonable fee” for the request but no regulations have been issued as of yet. If a plan refuses to meet this request, the employer could ask a federal court to enforce it.

Below is a proposed letter which can be used to request an estimate of the amount of withdrawal liability from a multiemployer pension plan. We suggest this letter be sent so the employer has proof of receipt by the plan (e.g. overnight carrier or U.S. Mail/certified with return receipt requested).

[Date]

Dear _____:

Pursuant to federal multiemployer pension plan law, we hereby make a formal request for certain information relating to the participation of [Employer name] in the [Pension Plan name]. Under Employee Retirement Income Security Act (ERISA) Section 101(l) [Notice of Potential Withdrawal Liability], we hereby request a written notice of (a) the estimated amount of the company’s withdrawal liability under part 1 of subtitle E of title IV of ERISA if the company withdrew during the [year] Plan Year and (b) an explanation of how such estimated liability amount was determined, including the actuarial assumptions and methods used to determine the value of the Pension Plan’s liabilities and assets, the data regarding employer contributions, unfunded vested benefits, annual changes in the Pension Plan’s unfunded vested benefits, and the application of any relevant limitations on the estimated withdrawal liability.

We appreciate your anticipated cooperation with providing us the requested information in a timely manner.

Very truly yours,

[Signature]

Request ongoing information on the health of a multiemployer pension plan

ERISA entitles an employer which participates in a multiemployer pension plan to receive from the plan, upon written request, a copy of the following information

- the current plan document,
- the latest summary plan description of the plan,
- the current trust agreement (or other instrument under which the plan is established or operated)
- any employer plan participation agreement for the last 5 years,
- the annual report (Form 5500) for any plan year,
- the plan funding notice for any plan year,
- any plan actuarial report in the plan's possession for at least 30 days,
- any periodic plan financial report prepared by any plan investment manager or advisor or other fiduciary in the plan's possession for at least 30 days,
- audited financial statements of the plan for any plan year,
- any application filed with the IRS requesting an extension of the amortization period to amortize any unfunded liability of the plan and the determination of the IRS pursuant to such application, and
- the latest funding improvement or rehabilitation plan for a plan in critical or endangered status, and the related contribution schedules.

Such information is required to be provided to the employer by the plan within 30 days of the request. An employer is entitled to make these requests once in a 12-month period.

The plan is not required to comply with a request for documents described in E, F, G, H or I above if they have been in the plan's possession for 6 months or more. The plan can require a reasonable charge to cover copying, mailing, and other costs of furnishing any copies of information requested by the employer, but such charge

cannot exceed the lesser of: (A) The actual cost to the plan for the least expensive means of acceptable reproduction of the document(s) or (B) 25 cents per page; plus the cost of mailing or delivery of the document.

Multiemployer pension plans are subject to a civil penalty under ERISA of not more than \$1,000 a day (as adjusted for inflation) for failures or refusal to furnish to the employer the information described above.

If you need assistance or would like additional information, contact [Michael Bindner](#) or any other member of the [Tax Law Practice Group](#) for *Tax Law Defined*[®].

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