



Aug 23, 2021

Categories:

[Publications](#)

Authors:

[Michael T. Bindner](#)

Is there really an exemption from union pension plan withdrawal liability for the trucking industry?

In a multiemployer/union benefit plan, two or more employers contribute under the terms of one or more collective bargaining agreements (CBAs). The Employee Retirement Income Security Act of 1974 (ERISA) governs multiemployer pension plans. The plans are also subject to special rules added to ERISA in the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). MPPAA imposes an exit penalty, referred to as “withdrawal liability,” on some employers who withdraw from an underfunded plan (when vested benefits exceed the value of pension plan assets).

Withdrawal liability can be triggered when an employer has a significant reduction in its participating union workforce (a “partial withdrawal”), a complete reduction in its participating union workforce (a “complete withdrawal”), or when there is a withdrawal of all employers from the plan (a “mass withdrawal”).

At least 17 provisions in MPPAA abate, reduce, offset, or eliminate withdrawal liability. Our article breaks the provision exempting certain employers in the long and short haul trucking industry, household goods moving industry and public warehousing industry (all generally referred to as “trucking industries”) if certain requirements are met.

Trucking Industry exemption requirements

An employer will be exempt from withdrawal liability if:

- the employer has an obligation to contribute to a multiemployer pension plan *primarily* for work in the trucking industries,
- *substantially all* of the contributions required by the plan are made by employers *primarily* engaged in these industries,
- the employer permanently ceases to have an obligation to contribute to the plan or permanently ceases all covered

operations under the plan,

- the employer does not continue to perform work in the plan's jurisdiction, and
- the Pension Benefit Guaranty Corporation (PBGC) does not determine the plan has suffered substantial damage to its contribution base as a result of:
 - the cessation of the employer's obligation to contribute under the plan (considered together with any cessations by other employers), or
 - the cessation of covered operations under the plan, within five years of the cessation of contributions or ceasing of all covered operations.

Until the expiration of such five-year period (or an earlier assessment of withdrawal liability), the employer must furnish a bond, or an amount held in escrow equal to 50% of the employer's withdrawal liability to avoid the automatic assessment of withdrawal liability.

If withdrawal liability is assessed within the five-year period as described above, the bond or escrow shall be paid to the plan and the remaining 50% of the withdrawal liability will be assessed to the employer.

No withdrawal liability will be assessed against such an employer more than five years after the employer ceases contributions to the plan or ceases covered operations under the plan. In this case, any bond in place shall be cancelled or escrow returned.

"Substantially All" and "Primarily" requirements

On paper, the exemption seems promising, but it appears there are few qualified employers. In 1984, the General Accounting Office (GAO) reported to Congress that there were 55 trucking industry plans with over 100 participants. The GAO surveyed nine of the 55 plans. Only one qualified; the other eight plans did not meet the requirement that "substantially all" of the required plan contributions must be made by employers primarily engaged in trucking industries. Notably, those nine plans accounted for 48% of

the participants in the 55 plans considered. The 1984 report also noted that the trucking industry plans were not in good financial health.

The phrase “substantially all” is not defined in the statute. There are no PBGC regulations interpreting this exemption, and the legislative history on this issue is somewhat inconsistent. The Seventh Circuit Court of Appeals in 1990 determined that “substantially all” means 85% or more, which is consistent with how the term is interpreted for the building and construction industry exemption from withdrawal liability and how the Internal Revenue Service interprets the phrase for a number of uses. The Court of Appeals said, [“‘substantially all’ sounds like ‘less than all, but not much less’”] (*Continental Can Co., Inc. v. Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund*, 1990).

There are effectively three standards that must be met for an individual employer to qualify for the exemption. The plan’s contributions must be (1) substantially all from employers, (2) primarily engaged in the trucking industry, and (3) the withdrawing employer’s obligation to contribute must be primarily for trucking industry work. As the 1984 GAO report indicated:

For a plan to qualify for the rule, substantially all of the contributions required under the plan must be made by trucking employers. This is unlike the construction rule which requires only that substantially all contributions be made for work in the construction industry. This means, for example, that a plan that receives contributions solely for trucking work, but primarily from nontrucking employers (e.g., retail store employers contributing for their trucking employees) would not qualify for the trucking rule. In addition, individual employers must have an obligation to contribute to the plan primarily for trucking work. This means that, even if the plan qualifies, employers contributing to qualified trucking plans primarily for nontrucking work are still subject to the general withdrawal liability rules.

The parties in the 1990 *Continental Can* case told the court that none of the large trucking industry plans would meet the 85%

“substantially all” standard because too many of the participating employers that employ truck drivers making large contributions to large plans are not primarily engaged in the trucking business (*i.e.*, the employer’s truck drivers are delivering the employer’s manufactured products). For example, the Central States Pension Fund determined that only 45% of its contributions in 1999 were from employers primarily engaged in the trucking industry. Even if a plan meets these two tests, then an individual employer must be contributing to such a plan primarily for trucking work to qualify for the exemption.

“Substantial Damage” impediment

Even if a plan and employer meet the “substantially all” and the “primarily” standards described above, the exemption will not be available if the PBGC determines that the plan contribution base suffered substantial damage as a result of the employer’s cessation of contributions, considered together with any cessation by other employers.

The U.S. District Court decision for the District of Columbia (*Quality Automotive Services, LLC vs. Pension Benefit Guaranty Corporation*, 2013) describes or references four PBGC determinations of whether “substantial damage” has occurred. The PBGC determinations focused on (1) whether contributions and contributions base units were declining and (2) the general financial condition of the plan and whether it was improving or declining. There are not enough decisions available to provide a statistically valid analysis, but it seems likely the PBGC would find substantial damage had occurred if a plan was less than 65% funded and much less likely if a plan was over 80% funded.

Case law

There are no PBGC regulations interpreting this exemption and only a few PBGC advisory opinions referencing certain aspects of the exemption. Of the more than 2,500 federal court cases dealing with union pension plan withdrawal liability, less than 30 cases refer to the trucking industry exemption and most of those 30 decisions do not deal with the qualifying requirements for the exemption but

rather pertain to routine withdrawal liability issues such as arbitration deadlines, controlled group liability, “evade and avoid” issues and bankruptcy.

While it may have seemed like a good idea to adopt the trucking industry exemption from withdrawal liability and those employers who have or may qualify for the exemption likely appreciate it, the exemption does not appear to have benefited many employers.

If you need assistance or would like additional information, please contact [Michael Bindner](#) or any other attorney in Frost Brown Todd’s [Employee Benefits Group & ERISA](#) practice group.

You can read more about the ongoing union pension plan issues in our previous articles:

- [Union Pension Plan Participation Can Create Massive Unexpected Liabilities](#)
- [17 Ways to Avoid or Reduce Multiemployer Pension Plan Withdrawal Liability](#)
- [SURPRISE! You may be liable for union pension plan withdrawal liability](#)
- [Employer Receives a Multiemployer \(Union\) Pension Plan Withdrawal Liability Assessment – What To Do Next?](#)
- [Federal Government to Make Contributions to Union Pension Plans \(and other Pension Provisions in the American Rescue Plan Act\)](#)

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.