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Employee Benefits Update

SCOTUS Rules Against Employer Over Withdrawal Liability Assumptions

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On May 21, 2026, The United States Supreme Court unanimously held *in M & K Employee Solutions LLC v. Trustees of the IAM National Pension Fund* that multiemployer defined benefit plans may use demographic and economic assumptions adopted after the prior plan year's "measurement date" in calculating an employer's withdrawal liability. The opinion resolves a circuit split but introduces new uncertainty for employers considering withdrawal from underfunded multiemployer plans as they cannot now rely on initial withdrawal liability estimates and may receive increased employer withdrawal liability assessments.

Key Takeaways

1. Assumption changes are permitted post-measurement date. A plan may calculate withdrawal liability using actuarial assumptions selected after the measurement date, provided those assumptions are reasonable, account for the plan's experience and reasonable expectations, and reflect the actuary's best estimate of anticipated experience under the plan.
2. Withdrawal exposure is now more difficult to predict. Assumptions may be changed after the measurement date, which is critical since even small changes in a plan's actuarial assumptions can significantly affect the present value of a plan's unfunded vested benefits ("UVBs") and the allocable withdrawal liability.
3. The measurement date still matters. While actuarial assumptions can change after the measurement date, plan data used in the calculation (such as the number of beneficiaries and the value of the plan's assets) is fixed as of the measurement date.
4. Substantive challenges remain viable, but timing-only challenges are now weaker. Employers generally cannot challenge a withdrawal liability assessment solely because the assumptions were adopted after the measurement date. However, employers may still challenge actuarial assumptions as unreasonable or inconsistent with the actuary's best estimate.

Background

If an employer withdraws from an underfunded multiemployer pension plan, the Employee Retirement Income Security Act of 1974 ("ERISA") requires the withdrawing employer pay their allocable percentage share of the plan's UVBs, which is the difference between the present value of the benefits owed to employees and the current value of the plan's assets. This withdrawal liability is calculated by the plan as of the last day of the plan year before the employer's withdrawal (the "measurement date").

In *M & K,* the underfunded IAM National Pension Fund (the "Fund") used a 7.50% discount rate to calculate Fund UVBs of ~$500 million as of the December 31, 2017 measurement date. In January 2018 – after the measurement date – the Fund's trustees elected to apply a 6.50% discount rate for employers withdrawing during or after 2018, which increased the Fund's UVB's to more than $3 billion.

Several employers withdrew from the Fund in 2018, expecting application of the 7.5% discount rate in effect as of the December 31, 2017 measurement date. However, the Fund's actuary applied the 6.50% discount rate, even though the discount rate assumption was changed after the measurement date, which greatly increased each employer's withdrawal liability assessment. For example, M & K's withdrawal liability assessment increased from ~$1.8 million to ~$6.2 million under the new assumptions.

The employers challenged the assessments in arbitration. The arbitrators agreed with the employers, concluding that the Fund must use the assumptions "in effect" on the measurement date. However, the district courts disagreed, and the D.C. Circuit affirmed. Since the D.C. Circuit's approach conflicted with the Second Circuit's rule requiring interest-rate assumptions to be adopted on or before the measurement date, the Supreme Court granted review.

The Supreme Court Decision

The Court affirmed the D.C. Circuit and held that ERISA does not require actuarial assumptions be selected on or before the measurement date.

In applying Sections 4211 and 4213 of ERISA, the Court reasoned that Section 4211 (which describes methods for computing withdrawal liability) sets a measurement date for calculating the plan's UVBs, but no deadline for selecting actuarial assumptions. Section 4213 (which governs actuarial assumptions) also provides no deadline for adoption of assumptions – it merely requires that assumptions be reasonable in the aggregate, take account of the plan's experience and reasonable expectations, and represent the actuary's best estimate of anticipated experience under the plan. The Court concluded that actuarial assumptions are not factual inputs for the UVB calculation that must be fixed on the measurement date, but part of the UVB calculation itself which is performed after the measurement date. Therefore the assumptions can also be selected after the measurement date.

The Court rejected the employer's argument that actuarial assumptions are factual inputs that must be frozen on the measurement date. Instead, the Court treated assumptions as predictive tools used to calculate the plan's UVBs, and recognized that some relevant information may not be available until after the measurement date. Since Section 4213 requires that assumptions be reasonable and account for the plan's current and expected experience, freezing the actuarial assumptions as of a measurement date undermines the "best estimate" requirement in the statute, and would force the plan to use stale data.

The Court also rejected the employers' broad anti-retroactivity and manipulation policy arguments. It concluded that Section 4214 of ERISA prohibits retroactive adoption of withdrawal liability rules or amendments, but this does not apply to actuarial assumptions. Employers also warned that plans could manipulate withdrawal liability by adopting assumptions after the measurement date, but the Court emphasized that employers may still challenge unreasonable assumptions in arbitration.

What This Means

The *M & K* decision underscores the impact that actuarial assumptions have on withdrawal liability, and is a significant decision affecting employers that contribute to underfunded multiemployer pension plans that are currently considering withdrawal. Withdrawing employers can no longer argue that the plan adopted the relevant discount rate or other actuarial assumptions after the measurement date. Instead, employers should focus on the substance of the assumptions used, including whether they were reasonable, whether they accounted for the plan's experience and reasonable expectations, and whether they reflected the actuary's best estimate.

Employers contributing to underfunded plans should also preserve and review the actuarial record, which includes valuation materials, the assumptions selected, the rationale for any discount-rate change, the data considered, and the timing of the assumption-selection process. Those materials will support future withdrawal decisions and assessment challenges if the dispute shifts to whether the assumptions were reasonable.

Finally, employers considering withdrawal should model potential exposure under more than one assumption set. The case shows that a change in actuarial assumptions can materially affect the size of a withdrawal liability assessment.

If you have any questions about the *M & K* decision and its impact on your potential withdrawal liability, please contact a member of Eckert Seamans' Employment Law Practice Group.

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This Employee Benefits Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact John Westerhaus at 202.659.6653 or jwesterhaus@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.