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Taft-Hartley Report

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Illinois Governor Takes Aim at Unions

On Monday, February 9, 2015, Illinois Republican Governor Bruce Rauner issued Executive Order 15-13, which prohibits unions in Illinois from collecting "fair share fees" from public employees who choose not to join the union. Governor Rauner simultaneously filed a federal lawsuit against 26 public employee unions seeking to have the "fair share fees" declared unconstitutional.

Under current Illinois law, public workers can decline to join a union, but are still required to pay "fair share fees," which are intended to cover the cost of collective bargaining, contract enforcement, processing of grievances, and other non-political activities for the benefit of employees. Governor Rauner argues in his lawsuit that all actions by a union are inherently political and forcing non-members to pay "fair share fees" is a violation of the employee's First Amendment rights. In turn, unions argue that non-members should not be allowed to free ride and should be required to pay their fair share of the costs of collective bargaining and contract enforcement, since they receive the benefits from such activities. If Governor Rauner is successful, the lawsuit would prohibit unions from collecting these "fair share fees" from non-members, even though the non-members would continue to receive the benefits from the union's collective bargaining and contract enforcement.

The unions recently filed a motion to dismiss Governor Rauner's federal lawsuit and also filed a separate lawsuit in Illinois State Court in St. Clair County seeking a determination that Governor Rauner's Executive Order is contrary to Illinois law. The unions also seek a preliminary injunction to put a halt to the Executive Order while the lawsuit works its way through the Court.

Attorney General Lisa Madigan has also joined the litigation. Madigan filed a motion to intervene in the federal lawsuit and later filed a motion to dismiss Governor Rauner's lawsuit arguing that the Governor does not have the legal authority to bring the lawsuit in federal court. The motions to dismiss the federal lawsuit are expected to be decided later this summer.

While the "fair share" lawsuits play out in Court, the Governor is continuing his push for "right-to-work zones," or areas of the state where local governments or municipalities could decide whether employees must join a union as a condition of employment. The Governor says that such zones would help Illinois compete with neighboring states that have implemented right-to-work statewide, such as Indiana, Michigan and most recently Wisconsin. Unions argue that the Governor's push for "right-to-work zones" is just another attempt to limit the power of unions and will result in lower wages and less safe working conditions for lower and middle class workers.

The Pitfalls of Trustee Expense Reimbursements

As you know, the personal use of plan assets by a fiduciary is prohibited under ERISA §406(b)(3). The Employee Benefit Security Administration (EBSA) of the Department of Labor (DOL) reviews **all** payments made to or on behalf of trustees by the plan during an investigative audit in detail, including reimbursements made to trustees or expenditures relating to trustee attendance at educational and training programs. J&K has a great deal of experience representing Taft-Hartley Plans in ferreting out EBSA questions regarding trustee reimbursements. Through that experience, we have compiled an understanding of the common pitfalls to avoid when requesting reimbursements. To that end, here is a list of our most commonly identified issues and pitfalls that trustees and fund employees should try to avoid when attending events and/or requesting reimbursements:

- Approval for attendance at events should be done explicitly either through the Expense Reimbursement Policy or by specific resolution of the Board and noted in minutes.
- Rental cars should nearly always be avoided, unless there is no other good alternative that is less expensive and this fact is well documented.

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- Register early and have the fund office or event sponsor host (e.g., IFEBP, etc.) book your lodging.
- Waiting too long to register can leave you in a hotel that charges more than the published host rates and will result in you paying out-of-pocket for the charges over the published rates.
- If you would like to have more than one alcoholic beverage with dinner, ask for a separate bill and pay for it personally.
- If you are bringing your spouse, you should meticulously separate his or her expenses from yours. Any difference in room rates needs to be paid for personally. You also need to get itemized receipts for any meals on the same ticket, so the exact costs of your spouse can be broken out.
- Do not submit any personal or entertainment expenses.
- All expenses should include a receipt, but always provide a receipt if the expense is over $25.
- The general credit card receipt at a restaurant or hotel and credit card statements are not enough. The receipt must be detailed (what was ordered, what was charged to the room, etc.).

As shown in the above list, the devil is in the details with regards to reimbursement of trustee and employee expenditures. Please contact our office for more detailed questions about the generally acceptable parameters or for assistance if your fund is selected by the DOL for investigation.

NLRB Holds that Employees May Use Employer Email for Protected Communications

In December 2014, the National Labor Relations Board (NLRB) ruled in *Purple Communications, Inc* that employees can now use their company email for more than just business purposes.[1]

Purple Communications, Inc. provides telephone interpretation services for the hearing impaired. Purple Communications, Inc. maintained a policy which prohibited employees from using their company email for any communications other than for business purposes.[2] The computer use policy specifically banned the use of company email for "activities on behalf of organizations or persons with no professional or business affiliation with the Company" and "uninvited emails of a personal nature."[3] In 2012, the Union, which was seeking to represent some employees of Purple Communications, Inc., filed an unfair labor charge with the NLRB alleging that the email policy restricted protected activity, specifically the right to engage in union organizing efforts under Section 7 of the National Labor Relations Act.

In its decision, the NLRB overruled its previous holding in *Register Guard,* 351 NLRB 1110 (2007), which ruled that employees do not have a right to use company email for protected communications. In reversing the *Register Guard* decision, the NLRB stated that employees given access to a company email have a right to use the system to communicate about employment terms and conditions. Further, the NLRB stated that use of email is similar to the communication that may occur at a "natural gathering place" in the workplace.[4] As such, the NLRB held that employees who have been granted access to their employer's email system are "entitled to use the system to engage in statutorily protected discussions about their terms and conditions of employment while on non-working time, absent a showing by the employer of special circumstances that justify specific restrictions."[5] Therefore, in order for an employer to restrict email usage about working conditions or terms of employment, the employer shall have to demonstrate special circumstances to maintain production or discipline.[6]

The NLRB held that the new communication rule will be applied retroactively.

[1] *Purple Communications, Inc.*, 361 NLRB No. 126 (Dec 11, 2014).
[2] *Id.* at 18.
[3] *Id.* at 3.
[4] *Id.* at 12.
[5] *Id.* at 5.
[6] *Id.*

Effectively Defending ERISA Claims in Litigation

The two most common claims brought against benefit funds under ERISA are those challenging a denial of benefits and claims involving an alleged breach of fiduciary duty. If properly pled, the type of claim will be apparent from the complaint. However, many times these claims are not clearly stated and often brought against the wrong party. Thus, before developing an effective strategy for defending any action, it is important to understand the claims being asserted.

Section 502 of ERISA provides a cause of action for participants and beneficiaries of ERISA plans "to recover benefits due him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."[1] There is a split of authority in the Circuit Courts as to whether the plan is the only proper defendant in a claim for benefits case under Section 502. For example, the Seventh Circuit has held the plan itself is the only proper defendant to such a claim.[2] As a result, the individual trustees are not proper defendants in a claim for benefits brought in the Seventh Circuit. However, the Sixth Circuit has determined that the employer or plan administrator, who controls the administration of the plan or is responsible for benefits decisions, may also be sued,[3] while the Eight Circuit has held that the plan administrator may be sued, but not the employer.[4]

It is also important to examine whether or not the claim was timely filed[5] and whether there are any accompanying state law claims that may be preempted by ERISA.[6] Examples of such state law claims that may be preempted include: promissory estoppel[7], breach of contract, negligence and fraud. To the extent any of these state law causes of actions relate to a claim for benefits, the plan should move to dismiss them.

The second most commonly pled claim under ERISA is breach of fiduciary duty.[8] Such claims are typically alleged against the individual trustees and may accompany a claim for benefits. As soon as the fund becomes aware of a potential breach of fiduciary duty claim, it is important to notify the trustees' fiduciary liability carrier. In most cases, the insurance carrier will pay the attorney's fees and defense costs associated with defending the claim. Again, it is important to ensure the claim is timely. ERISA provides that a claim for breach of fiduciary duty must be filed within the earlier of six years in the case of an ongoing breach, or three years after the Plaintiff had actual knowledge of the alleged breach.[9]

A fund's ability to effectively defend these claims starts with the plan's claims and appeals procedures. It is important that the fund have these procedures clearly stated within the plan document and clearly communicate any timing restrictions to participants and beneficiaries. Trustees should also work with counsel to ensure these procedures are followed for deciding all claims and appeals. Doing so will limit the amount of litigation brought against the fund and streamline the cases that are brought against the fund.

[1] 29 U.S.C. § 1132(a)(1)(B).
[2] See *Riordan v. Commonwealth Edison Co.*, 128 F.3d 549, 551 (7th Cir. 1997); and *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1490 (7th Cir. 1996).
[3] *Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 438 (6th Cir. 2006).
[4] *Layes v. Mead Corp.*, 132 F.3d 1246, 1249 (8th Cir. 1998).
[5] ERISA does not contain a statute of limitations for non-fiduciary duty claims. Instead, claims for benefits under ERISA are typically analyzed under the applicable state law statute of limitations for breach of a written contract.
[6] 29 U.S.C. § 1144.
[7] Some Circuits have held that estoppel, if properly pled, may be applied in certain actions brought under ERISA. See *Gallegos v. Mt. Sinai Medical Center*, 210 F.3d 803, 809 (7th Cir. 2000).
[8] 29 U.S.C. § 1109.
[9] 29 U.S.C. § 1113.

M&G Polymers USA, LLC v. Tackett

In one of the most important decisions of the year, the Supreme Court in *M&G Polymers USA, LLC v. Tackett* struck down the well-known union-friendly *Yard Man* Rule in the Sixth Circuit.[1] In 2000, M&G Polymers USA, LLC (M&G) entered into a Collective Bargaining Agreement and related Pension, Insurance, and Service Award Agreement (P&I Agreement) with the Union. The P&I Agreement provided for the following: (1) that certain retirees along with their surviving spouses and dependents would receive a *full company contribution towards the cost of health care benefits*; (2) that such benefits would be provided for the duration of the Agreement; and (3) that the P&I Agreement was subject to re-negotiation in three years.[2]

In December 2006, M&G announced that it would begin requiring retirees to contribute to the cost of their health care benefits.[3] The retirees sued for a violation of Section 301 of the Labor Management Relations Act, alleging that M&G had promised to provide lifetime contribution-free health care benefits.[4] The District Court dismissed the complaint, but on appeal, the Sixth Circuit held in favor of the retirees, applying the *Yard-Man* Standard.[5] In *Yard-Man*, the Sixth Circuit created an effective presumption that in the absence of evidence to the contrary, a collective bargaining agreement is intended to vest retirees with lifetime benefits. The Sixth Circuit in *Yard-Man* made the following determinations: (1) the durational clause in the agreement said nothing about the vesting of retiree benefits, and thus it implied a lifetime duration; (2) the absence of a termination clause in the agreement meant an intent to vest for life; (3) without lifetime benefits, the contract would be illusory; and (4) the industry custom in an agreement such as this is for retiree benefits to vest for life.[6]

The Supreme Court delivered a stunning blow to the Sixth Circuit's longstanding rule when it struck down *Yard-Man*, holding that "*Yard-Man* violates ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective bargaining agreements."[7] The Supreme Court rejected all of the reasoning used by the Sixth Circuit to support *Yard-Man*.[8] Specifically, the Supreme Court held the following: (1) that the Sixth Circuit should not have used its own idea of industry custom to interpret a contract; (2) the Sixth Circuit's interpretation that a durational clause says nothing about the vesting of retiree benefits contradicts contract law because it ignores the rule that a written agreement is presumed to encompass the whole agreement of the parties and not just a specific clause; and (3) ambiguous contracts should not be construed to create a lifetime promise under ordinary contract law. In sum, the Supreme Court held *Yard-Man* "distorts the attempt to ascertain the intention of the parties which lies at the heart of contract law."[9] Therefore, the Court reversed the decision of the Sixth Circuit and remanded the case to the Sixth Circuit to be re-heard using the rules of traditional contract law.[10] The decision of the Supreme Court is not the end of the story in *Tackett* and plan professionals should keep a close eye on what the Sixth Circuit does with this matter in light of erasing this long standing precedent.

[1] *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015).
[2] Specifically, the agreement stated: "Employees who retire on or after January 1, 1996 and who are eligible for and receiving a monthly pension under the 1993 Pension Plan . . . whose full years of attained age and full years of attained continuous service . . . at the time of retirement equals 95 or more points will receive a full Company contribution towards the cost of health care benefits described in this Exhibit B-1 . . . Employees who have less than 95 points at the time of retirement will receive a reduced company contribution." Exhibit B-1 also stated "Effective January 1, 1998 and for the duration of this agreement thereafter, the Employer will provide the following program of hospital benefits, hospital-medical benefits, surgical benefits and prescription drug benefits for eligible employees and their dependents." *Tackett*, 135 S.Ct. at 931.
[3] *Tackett*, 135 S. Ct. at 931.
[4] *Id.* at 931-932.
[5] *Id.* at 932 (citing *International Union, United Auto, Aerospace, and Agricultural Implement Workers v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983)).
[6] *Tackett*, 135 S. Ct. at 935-938.
[7] *Id.* at 935.
[8] *Id.* at 935-938.
[9] *Id.*
[10] *Id.*

Proposed Regulations on Summary of Benefits of Coverage (SBC)

On December 22, 2014, the Departments of Health and Human Services (HHS), Labor and Treasury (the Departments) issued proposed changes to the SBC regulations. The proposed regulations would change the SBC template, instruction guides, uniform glossary and incorporate interim guidance issued subsequent to the release of the final SBC regulations. The proposed regulations and additional materials are based on questions and feedback the Departments received from the community.[1]

The most notable proposed change is the new length of the SBC template. The proposed changes would decrease the template from four to two and a half double-sided pages. The Departments also created space on the SBC template by rearranging and deleting informational material that is not required by the statute.

The proposed changes also include an additional coverage example for a participant's costs relating to a simple foot fracture with an emergency room visit. The proposed regulations would retain the two current coverage examples regarding maternity and diabetes. Updates to the underlying pricing data are also being proposed, so the coverage examples would more accurately reflect the allowed charges experienced by participants.[2] Plans may also continue to use the HHS provided coverage example calculator as an alternative means of completing the coverage examples.[3]

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Proposed Regulations on Summary of Benefits of Coverage (*continued from previous page*)

The proposed regulations also require plans to disclose whether or not the plan covers abortion services. Plans must also specify in the SBC whether the plan provides minimum value and minimum essential coverage. Previously, plans could include this information as a separate document.

The proposed changes also update the uniform glossary that must accompany the SBC. Specifically, the Departments are proposing revisions to a few of the existing definitions in addition to adding new definitions, such as "claim," "cost sharing" and "specialty drug."

The proposed changes also incorporate previous FAQs that were released after the final regulations. The proposed regulations would allow plan sponsors to contract with a third party to take responsibility for SBC compliance as long as the plan sponsor monitors the third party's performance and corrects any non-compliance. The proposed regulations would also address the circumstances in which an SBC may be provided electronically.[4]

The proposed changes and new templates will be effective for plan years beginning on or after September 1, 2015.

[1]Proposed Summary of Benefits and Coverage and Uniform Glossary Rules Fact Sheet.
[2]*Id.*
[3]*Id.*
[4]These requirements were previously documented in FAQ about Affordable Care Act Implementation Part IX, issued May 11, 2012.

Controlled Group Liability for Multiemployer Pension Fund Withdrawal Liability

During the fall of 2014, J&K obtained three withdrawal liability decisions from courts in the U.S. District Court for the Northern District of Illinois on behalf of the Board of Trustees of the Automobile Mechanics' Local No. 701 Union and Industry Pension Fund. In each of these decisions, J&K obtained a judgment against someone or some entity other than the withdrawing employer under controlled group rules adopted by the U.S. Congress to collect withdrawal liability.

For the purposes of collecting and assessing withdrawal liability, "all employees of trades or businesses which are under common control shall be treated as employed by a single employer and all such trades and business as a single employer." 29 U.S.C. § 1301(b). In order to be in the "controlled group" with the withdrawing employer, the other person or entity must be (1) in common control with the withdrawing employer and (2) a trade or business. To determine whether a person or entity is in common control, the PBGC's regulations refer to complicated rules adopted by the IRS. Underlying each of the opinions obtained by J&K is the Seventh Circuit's adoption of the "leasing property rule" to determine whether a person or entity is a trade or business.

In the case of the *Bd. of Trs. of the Auto. Mechs.' Local No. 701 Union and Industry Pension Fund v. Joyce Ford, Inc.*, No.12-CV-7047, 2014 U.S. Dist. LEXIS 123120 (N.D. Ill. Sept. 4, 2014), the Court entered judgment for $419,115.37 against the entity that owned the property where Joyce Ford operated in Chicago's South Loop. The Court found the owner of the property liable for Joyce Ford's withdrawal liability, despite its arguments that it was a separate and distinct company from the withdrawing employer and that it was not a trade or business, because it was a registered corporation under common control with the withdrawing employer.

In the case of the *Bd. of Trs. of the Auto. Mechs.' Local No. 701 Union and Industry Pension Fund v. Beland & Wiegers Enters.,* 2014 U.S. Dist. LEXIS 153565 (N.D. Ill. Oct. 29, 2014), J&K sued the individual owner of the withdrawing employer, who also personally owned the property where his car repair shop operated. In the Court's decision, the Judge stated that "if an individual engages in a trade or business under common control with the withdrawing employer by leasing his property to the withdrawing employer, he is personally liable for payment of withdrawal liability." Therefore, the Court held that the owner was personally liable for the withdrawal liability obligations of his company that withdrew from the Pension Fund.

Finally, in the case of *Bd. of Trs. of the Auto. Mechs.' Local No. 701 Union and Industry Pension Fund v. Hannah Bros.*, No. 13-CV-5868, 2014 U.S. Dist. LEXIS 142938, 15 (N.D. Ill. Oct. 6, 2014), J&K sued a general partnership, alleging that it was a member of the controlled group with the withdrawing employer. The Court held that the general partnership's lease of boats to the withdrawing employer made it a trade or business. The Court entered a judgment for unpaid withdrawal liability against the general partnership. In addition, the Court entered judgment against a general partner, who was also an owner of the withdrawing employer, because pursuant to Illinois general partnership law, partners are personally liable for the debts of a general partnership.

If you determined or your counsel has informed you that withdrawal liability is uncollectible, make sure someone takes a look at whether there are any potential controlled group members that could be liable. Please contact J&K to conduct an investigation.

Apprenticeship Plans Can Pay for Expenses for Trade Skill Competitions

On December 8, 2014, the U.S. Department of Labor (DOL) released Field Assistance Bulletin 2014-02 (FAB 2014-02) which shed some light on whether the use of plan assets for apprenticeship contests and competitions is permissible under ERISA.

Under ERISA, apprenticeship and training plans are considered "employee benefit plans and subject to fiduciary standards." These standards require that a plan fiduciary must discharge his duty solely in the interest of the participants, prudently and for the exclusive purpose of (1) providing benefits to participants and their beneficiaries, and (2) defraying reasonable expenses of administering the plan.[1]

In the context of apprenticeship and training plans, this means that plan fiduciaries must ensure the reasonableness of plan expenses in light of the educational objectives of the training program. The DOL addressed several areas where apprenticeship and training plans might pay for the costs associated with trade skill competitions:

Organizing and Conducting the Competitions:

Expenses for organizing or conducting competitions such as rent for a venue, transportation of equipment and advertising are generally permissible where (1) they are reasonable relative to the size of the fund and the role played by the fund in the competition and (2) they are approved by the Board of Trustees in accordance with the terms of the plan's internal accounting. Gifts to those organizing or conducting competitions of modest value like $25 gift cards, for example, are allowable. Moreover, modest expenses for t-shirts that bear the logo of the plan are also permissible because they could serve a legitimate plan purpose of marketing the program.[2]

Travel Expenses:

A plan may also pay reasonable expenses, such as transportation to and from the competition, parking, baggage fees, registration fees, accommodations and meals (when out of town). A plan may also pay lost wages of the apprentices due to their absence from employment while participating in a competition. These expenses should be approved by the Board of Trustees in accordance with internal controls designed to prevent inappropriate or excessive expenditures of plan assets.

It is important to note that the costs associated with the personal itinerary of participants such as a hotel, meals or travel accommodation for days not associated with necessary travel to and from the competition or during the competition itself are not a permissible plan expense. Also, trustees may not benefit themselves through the expenditure of plan assets related to that contest beyond the reimbursement of direct expenses related to organizing or participating in the conduct of the contest.

Prizes:

Prizes for apprentices competing in the skills contest are permissible, but should be consistent with the training purposes of the plan. The amounts spent on prizes should be reasonable in light of the financial situation of the plan.

Reimbursement to Employers:

There are some situations where, instead of paying the apprentice directly for lost wages due to participation in a contest, some plans elect to reimburse employers who agree to pay the participants their wages and make related contributions for time away from work to take part in the contest. The DOL finds this reimbursement permissible if it is made pursuant to a clear written agreement arranged in advance and is reasonable.[3] These expenses should be approved by the Board of Trustees in accordance with internal controls designed to prevent inappropriate or excessive expenditures of plan assets.

For more information on apprenticeship and training plan expenses, please contact our office.

[1] United States Department of Labor, Employee Benefits Security Administration, *Field Assistance Bulletin No. 2014-02*, December 8, 2014.
[2] *Id.*
[3] *Id.*

Participant Prohibited from Transferring Former Spouse's Vested Survivor Benefit

What happens if a participant retires with a joint and survivor annuity naming his current spouse as his survivor beneficiary, gets divorced, gets remarried, and then wants to take away the survivor benefit from his former spouse and give it to his new wife? Under ERISA, this is not allowed. A participant is prohibited from transferring his former spouse's vested survivor benefit without a valid spousal waiver.

ERISA entitles certain spouses of pension plan participants to a survivor annuity unless waived pursuant to clearly defined procedures. Without the spouse's written consent expressly acknowledging the effect of the waiver or new beneficiary designation, a participant can neither waive nor alter the survivor annuity.

The U.S. Court of Appeals for the District of Columbia recently addressed whether, after a survivor annuity had vested and absent a QDRO, a pension plan participant could use state law to obtain legal control over his former spouse's survivor benefit. *VanderKam v. VanderKam,* 776 F.3d 883 (D.C. Cir. 2015).

In *VanderKam*, the participant worked for Huffy Corporation and participated in its ERISA-governed pension plan, which provided retirement benefits through a joint and survivor annuity. Prior to his retirement, the participant designated his wife as the survivor beneficiary of a Qualified Joint and Survivor Annuity (QJSA). The participant retired in 1994 and the survivor annuity irrevocably vested in his wife. Eight years after his retirement, in 2002, the participant and his wife divorced. One year later, the participant remarried and sought to designate his new wife as the survivor annuity beneficiary. As such, the participant obtained an order from the Texas state court which amended his divorce decree to allow the participant to designate his new wife as the beneficiary of his survivor benefits.

In 2005, Huffy Corporation terminated its pension plan and the Pension Benefit Guaranty Corporation (PBGC) took over the plan. In doing so, the PBGC determined that the Texas court order was not a QDRO exempt from ERISA because it would have forced the plan to provide survivor benefits for the duration of the second wife's life and not for the duration of the former spouse's life. Moreover, the PBGC found that ERISA required that the survivor benefits had vested in the former spouse, unless she had waived the benefits within 90 days of that date, which she had not done.

In a May 2013 opinion, the district court upheld the PBGC's decision, finding that the Texas court order was not a valid QDRO and that the former spouse was the proper beneficiary of the participant's benefits under ERISA. The participant appealed the district court's decision. On appeal, the U.S. Court of Appeals for the District of Columbia affirmed the decision of the district court ruling that the Texas statute was in direct conflict with both the text and the purposes of the protections provided to beneficiaries of joint and survivor annuities under ERISA. As a result, the appellate court held that the state law was preempted by ERISA.

Thus, a pension plan administrator should prohibit participants from transferring a former spouse's vested survivor benefit without a valid spousal waiver.

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New Multiemployer Plan Disclosure Requirements for 2015

Multiemployer plans are subject to a number of disclosure requirements. The Multiemployer Pension Reform Act of 2014 (MEPRA) increased the number of documents that are subject to disclosure, particularly as applied to contributing employers.

ERISA Section 101(k) requires multiemployer plans to make certain documents available to participants, beneficiaries, sponsoring unions, and contributing employers, within thirty (30) days of a written request. Previously, this list included copies of any periodic actuarial, financial, and investment manager reports within the plan's possession for 30 days and copies of any application requesting an extension of amortization schedules.

MEPRA increased the disclosure list effective for the 2015 plan year to include the following documents:

- Current plan document and amendments
- Most recent summary plan description (SPD)
- Current trust and amendments
- Audited financial statements
- Form 5500
- Funding notice sent to participants
- Applicable Funding Improvement or Rehabilitation Plan and related contribution schedules
- If requested by a specific employer, that employer's participation agreements for the current year or any of the five (5) preceding plan years

Plans were previously required to provide several of these items such as the plan, trust, SPD, and Form 5500 to participants, but not to contributing employers pursuant to DOL Reg. Section 2520.104b-1. Now the above items must be provided to participants, beneficiaries, sponsoring unions, and contributing employers, within 30 days of a written request.

Generally, plans can limit requests to one copy per 12 month period and to documents that have first come into their possession during the last six (6) years. Also, plans can charge for the cost of copying up to $0.25 per page.