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WITHDRAWAL LIABILITY AT THE CROSSROADS

Supreme Court poised to redefine the rules

A case currently before the Supreme Court of the United States could significantly affect how multiemployer pension plans are funded and administered. The dispute, *M&K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, arises from a common issue in the multiemployer plan context: the calculation of withdrawal liability when an employer exits a plan. On one side is M&K Employee Solutions, LLC; on the other is the Board of Trustees of the IAM National Pension Fund, which administers the pension fund associated with the International Association of Machinists and Aerospace Workers.

Multiemployer pension plans operate under a pooled contribution model in which participating employers contribute to a single fund, and eligible employees accrue benefits over time, including across different employers within the same plan. This structure can offer administrative efficiencies and workforce mobility, but it also depends on consistent employer participation and contributions. When an employer withdraws, federal law generally requires the employer to pay "withdrawal liability," representing its share of any unfunded vested benefits. The purpose of this requirement is to allocate plan funding obligations among participating and withdrawing employers in a manner consistent with statutory requirements. The central issue in this case is not whether withdrawal liability applies, but how it should be calculated.[1]

Determining withdrawal liability requires actuarial valuation of the plan's financial condition as of a specified date, typically the last day of the plan year preceding the employer's withdrawal. Actuaries rely on a range of assumptions, such as expected investment returns, mortality rates, and administrative costs, in performing these calculations. Adjustments to these assumptions can materially affect the resulting liability.[2]

The dispute focuses on whether actuarial assumptions must be fixed as of the valuation date or whether they may be updated after that date, provided they are intended to reflect information available as of that same point in time. Following the close of the relevant plan year, the plan's actuary adopted updated assumptions, including changes to the interest rate and cost projections, which increased the plan's measured unfunded liability and, correspondingly, the withdrawal liability assessed against departing employers.[3]

M&K Employee Solutions, LLC contends that the governing statute requires a clear and administrable rule under which all assumptions are established as of the valuation date and are not subject to later revision. From the employer's perspective, such an approach promotes predictability and facilitates financial planning by limiting exposure to adjustments made after the fact.

The plan's trustees take the position that actuaries should be permitted to apply professional judgment to determine the most

accurate estimate of the plan's financial condition as of the valuation date, even if that analysis is completed afterward. In their view, this approach supports more precise measurement of plan obligations and aligns with actuarial standards of practice. Although the legal issue is technical, its implications are meaningful for both plan sponsors and contributing employers. Withdrawal liability is a key component of the statutory framework governing multiemployer plans, and the methodology used to calculate it can affect contribution obligations, plan funding levels, and employer participation decisions. It is one of the primary mechanisms that protects multiemployer pension plans from being underfunded when employers leave. If liabilities are underestimated, the burden may shift to remaining employers or place additional strain on the plan's long-term health.[4]

At the same time, the regulatory framework must balance accuracy in plan funding with the need for clear and predictable rules that allow employers to assess potential liabilities. Moreover, withdrawal liability rules that are perceived as unpredictable or overly burdensome may discourage employer participation in multiemployer plans. The outcome of this case may influence how that balance is struck going forward. The Supreme Court heard oral arguments in January 2026. The questioning reflected interest in both parties' positions. Some justices examined whether a strict cutoff for assumptions could limit the ability to reflect relevant economic conditions, while others focused on the potential uncertainty associated with post-valuation adjustments. The discussion suggested the Court is considering how best to reconcile predictability with accurate valuation practices.[5]

Ultimately, the Court's decision will establish a nationwide standard governing the timing and use of actuarial assumptions in withdrawal liability calculations. Whether the Court adopts a more rigid or more flexible approach, the ruling will have implications for plan administration, employer obligations, and the broader multiemployer pension system. For more information, please contact our office.

[1] https://www.winston.com/en/blogs-and-podcasts/benefits-blast/supreme-court-to-address-timing-of-actuarial-assumptions-in-determining-multiemployer-plan-withdrawal-liability
[2] https://blog.ifebp.org/freezing-the-frame-supreme-court-withdrawal-liability-case-to-address-timing-of-actuarial-assumptions
[3] https://www.law.cornell.edu/supct/cert/23-1209
[4] https://www.wagnerlawgroup.com/blog/2025/07/supreme-court-to-hear-pension-withdrawal-liability-case-that-may-impact-most-of-the-nations-multiemployer-plans
[5] https://www.scotusblog.com/2026/01/justices-dubious-about-forcing-actuaries-to-use-out-of-date-assumptions-in-assessing-costs-of-leaving-a-multi-employer-pension-plan

SEVENTH CIRCUIT: INTENT ALONE DOESN'T CHANGE AN ERISA BENEFICIARY

Recently, the U.S. Court of Appeals for the Seventh Circuit considered whether a retirement plan participant effectively removed his former spouse as the beneficiary of his ERISA-governed retirement account prior to his death in the case *Packaging Corporation of America Thrift Plan for Hourly Employees v. Langdon*, 166 F.4th 645 (7th Cir. 2026).

An employee of Packaging Corporation of America (PCA) participated in the company's retirement plan. While the employee was married, he designated his wife as the primary beneficiary of his retirement account and named his sisters as contingent beneficiaries. After the couple divorced, the employee sent a fax to PCA's benefits center requesting that his ex-wife be removed as a beneficiary from several benefit plans, including his retirement account. The plan administrator removed the ex-wife from certain insurance benefits but did not remove her as the designated primary beneficiary of the retirement account. The employee passed away four months later without submitting additional documentation to PCA's benefits center.

Following his death, both the employee's estate and his ex-wife made claims to the remaining retirement funds. The district court concluded that the employee had substantially complied with the plan's procedures for changing a beneficiary and determined that the ex-wife had effectively been removed. After the court entered summary judgment in favor of the employee's estate, the ex-wife appealed.

Under the federal common law doctrine of substantial compliance, a participant must (1) clearly express intent to change a beneficiary and (2) take positive action that is, for all practical purposes, similar to the steps required by the plan. The Court of Appeals agreed that the employee clearly expressed his intent to remove his ex-wife as a beneficiary, but he did not satisfy the second element. The plan documents required participants to update beneficiaries designations by contacting the benefits center or making changes online. Instead, the employee sent a fax requesting the change and asked the plan to provide him with any necessary paperwork. He did not follow up or complete any additional forms.

The Court of Appeals held that sending a fax was not for all practical purposes similar to the process required by the plan document, and the employee therefore did not substantially comply with the plan's beneficiary-change procedures. Accordingly, the Court reversed the district court's decision and held that the ex-wife remained the primary beneficiary at the time of the employee's death.

Under this decision even clear intent to change a beneficiary may be insufficient if the participant does not follow the plan's specified procedures. For employers and plan fiduciaries, the case highlights the importance of clear instructions for making changes to designated beneficiaries and consistent plan administration. For participants, it serves as a reminder to follow all steps required by the plan and confirm that beneficiary updates have been properly processed.

UPDATES ACROSS MOST FAVORED NATION DRUG PRICING, TRUMPRX, AND FEDERAL LEGISLATION

As a brief overview, in May 2025, President Donald Trump signed Executive Order 14297 directing federal agencies to pursue pricing arrangements that would align certain U.S. drug prices with the lowest prices paid in comparable developed countries, also known as a Most Favored Nation (MFN) prescription drug pricing. Beginning in September 2025 through early November, major pharmaceutical manufacturers (including Pfizer, AstraZeneca, EMD Serono, Eli Lilly, and Novo Nordisk) entered voluntary agreements to participate in MFN-aligned pricing arrangements with the Trump administration.

In December 2025, additional agreements were announced with Amgen, Boehringer Ingelheim, Bristol Myers Squibb, Genentech, Gilead Sciences, GSK, Merck & Co., Novartis, and Sanofi. In January 2026, AbbVie and Johnson & Johnson disclosed voluntary MFN pricing arrangements as well. Many of these agreements appear to be time-limited to three year engagements and also include participation in a federal online prescription drug pricing platform, otherwise known as TrumpRx.

On February 5, 2026, the administration launched TrumpRx, a federally led online prescription drug pricing platform. TrumpRx displays prices for certain brand-name drugs that reflect negotiated MFN-based pricing or manufacturer discounts they have committed to matching. The platform allows users to search medications by name, view listed cash prices, and identify participating pharmacies or manufacturer fulfillment programs. TrumpRx is not a direct pharmacy; instead, the service provides pricing information and shows consumers to participating pharmacies or manufacturer programs where the listed prices can be accessed. The prices provided by TrumpRx are primarily self-pay cash prices. If consumers utilize TrumpRx, the self-pay prices do not automatically apply toward insurance deductibles or annual out-of-pocket maximums unless their plan accepts external pharmacy receipts.

Additionally, President Trump signed the Consolidated Appropriations Act 2026, on February 3, 2026. It provides for fiscal year appropriations for federal agencies, as well as providing pharmacy benefit manager (PBM) reforms applicable to employer-sponsored group health plans and Medicare Part D. The statute prohibits PBM compensation structures that are directly linked to drug list prices or calculated as a percentage of rebates. The law requires PBMs servicing employer-sponsored plans to pass through 100 percent of rebates, discounts, and other remuneration to the plan sponsor. The law also establishes new reporting requirements related to drug pricing, administrative fees, and rebate retention. Several PBM-related provisions are to take effect on January 1, 2028.

As of early March 2026, sixteen major pharmaceutical manufacturers have publicly announced voluntary participation in MFN pricing arrangements. TrumpRx is operational as the administration's consumer-facing pricing platform that reflects the agreement terms. Implementation of PBM reforms under the Consolidated Appropriations Act of 2026 is pending according to the statute's effective dates and further regulatory guidance.

DOL BENEFITS ADVISORY COUNCIL REMAINS INACTIVE

With no meetings since late 2024, the ERISA Advisory Council's future role in shaping employee benefits policy is increasingly in question.

The future of a long-standing federal advisory panel on employee benefits policy is unclear after more than a year without public activity. The U.S. Department of Labor ("DOL") Advisory Council on Employee Welfare and Pension Benefit Plans ("Council") has not convened since late 2024.

Congress created the Council through the Employee Retirement Income Security Act of 1974 ("ERISA") to advise the Labor Department on issues affecting employee pension and welfare benefit plans. The 15-member Council historically has included representatives from labor organizations, employers, benefits consultants, and academics. Members typically serve staggered terms, allowing the Council to operate continuously across presidential administrations.

For decades, the Council served as a forum for examining emerging benefits issues and providing recommendations to the DOL. Each year, the Council selected several topics for study—such as retirement plan governance, health plan claims procedures, or fiduciary obligations—and held hearings that featured testimony from industry experts, unions, employers, and policy advocates. The Council then issued formal reports to the Secretary of Labor summarizing its findings and recommendations.

Those reports have informed regulatory priorities or agency guidance on ERISA-related matters. While the Council's recommendations are advisory rather than binding, the body has traditionally functioned as one avenue through which stakeholders could present research and policy proposals to the DOL.

The Council's recent inactivity has raised questions about whether it will resume that role. Public meetings have not occurred since December 2024, and the DOL has not announced new study topics or schedules for hearings. Because ERISA authorizes the Council, the Council itself has not been formally eliminated. However, without meetings or active projects, its role in the policymaking process remains uncertain.

The pause comes as employee benefits policy continues to evolve in areas such as retirement plan investment practices, fiduciary standards, and the administration of health and welfare plans. Advisory councils have historically helped federal agencies collect technical information and stakeholder perspectives on issues before undertaking rulemaking or issuing guidance.

At the same time, the Council's status reflects a broader pattern affecting some advisory and administrative bodies across the federal government. In recent years, several agencies have reduced or delayed the work of advisory committees because of shifting administrative priorities, resource constraints, or changes in regulatory agendas. Some panels have been dissolved outright, while others remain authorized by statute but operate intermittently or with reduced activity.

Whether the Council will return to that regular role remains unclear. Because ERISA continues to authorize the advisory body, the DOL retains the ability to reconvene the panel and appoint members to conduct future studies. Until the DOL announces additional meetings or appointments, however, the Council's role in the federal benefits policy framework remains uncertain.

For now, the Council's inactivity highlights the evolving role of advisory committees within current federal administrative structures.

TRUMP ACCOUNTS: WHAT THEY ARE AND WHAT THEY MEAN FOR YOU

"Trump Accounts" is an informal term used to describe legislative proposals that would create new tax-advantaged personal savings accounts designed to promote long-term saving and asset building under the Internal Revenue Code ("Code"). While no final statute has been exacted creating a specific account by this name, proposals have generally considered adding a new section of the Code that would create eligibility rules, contribution limits, permitted investments and tax treatment.

The general idea behind the proposal is that individuals—or parents on behalf of their children—would open an account funded with after-tax dollars. The funds would then be invested and allowed to grow over time. The structure is often compared to Roth IRAs or 529 college savings plans because of the potential for tax-favored growth.

Although no final version has been enacted into law, most proposals include annual contribution limits, income eligibility rules, and restrictions on when and how money can be withdrawn. Earnings in the account would generally grow tax-deferred, and withdrawals could potentially be tax-free if used for approved purposes such as education expenses, purchasing a first home, starting a business, or saving for retirement. Some versions have also discussed automatic accounts for children at birth with a modest government "seed" deposit to encourage early saving.

If created, these accounts would be individually owned and controlled, separate from employer-sponsored ERISA benefit plans. They would not replace pensions, annuity plans, or health coverage provided through Taft-Hartley funds or other collectively bargained arrangements. Instead, they would function as an additional personal savings option available under federal tax law.

At this time, "Trump Accounts" remain legislative proposals under discussion at the federal level. Any future implementation would depend on Congressional action and subsequent regulatory guidance from the Treasury Department and IRS.

THE DAVIS-BACON ACT: HISTORY, MODERN APPLICATION, AND ITS IMPACT ON EMPLOYEES AND EMPLOYERS

The Davis-Bacon Act ("DBA"), in simplest terms, serves broadly as a "minimum wage law designed for the benefit of construction workers."[1] It is a cornerstone of federal labor law, setting wage standards for workers on federally funded construction projects. Since its enactment in 1931, the DBA has shaped the landscape of public works, influencing both the construction industry and the broader debate over prevailing wage laws. This article explores the history of the DBA, its current application, and the ways it helps and challenges both employees and employers.

HISTORY AND PURPOSE OF THE DBA

The DBA was passed during the depths of the Great Depression, a time when economic hardship and high unemployment plagued the nation. The DBA was a response to the practice of contractors winning federal construction contracts by importing low-wage, often itinerant labor from outside local communities, thereby undercutting local wage standards and displacing local workers. Congress sought to ensure that federal construction projects would not depress local wage rates or undermine local labor markets.[2][3]

The DBA requires contractors and subcontractors working on federally funded or assisted construction contracts exceeding $2,000 to pay laborers and mechanics no less than the locally prevailing wages and fringe benefits. These wages and benefits are determined by the Secretary of Labor based on compensation for similar work in the area.[4]

The legislative history of the DBA reveals its dual purpose: to protect local wage standards and to prevent the federal government from inadvertently subsidizing substandard wages through its construction contracts. As the Supreme Court has noted, the DBA was "designed to protect local wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area."[5] Initially, the DBA applied only to the construction of public buildings, but in 1935, Congress expanded its coverage to include "public works," broadening the scope to projects such as roads, bridges, and other infrastructure.[6]

MODERN APPLICATION OF THE DBA

Scope of the DBA: The DBA applies only to projects that are truly public in nature—those that are publicly funded and/or owned or operated by the government.[7] Courts have consistently held that the DBA does not extend to privately funded, owned, and operated projects, even if the government is involved in planning or approving the project. For example, in *District of Columbia v. Department of Labor*, the D.C. Circuit held that a large, privately funded and operated

development was not subject to the DBA, despite the city's involvement in leasing the land and approving the project.[8] The court found that CityCenterDC did not meet the criteria for the DBA's application because D.C. was not a party to the construction contracts, having leased the land to private developers who then contracted with general contractors.[9] Additionally, CityCenterDC was not considered a public work, as it lacked public funding and government ownership or operation. [10] Accordingly, whether a contract is truly "public" is a key determination as to whether the DBA applies.

Enforcement and Compliance: Employees generally do not have a private right of action under the DBA, as enforcement of the DBA is primarily administrative.[11] The contracting agency is responsible for including the appropriate wage determinations in bid specifications and contracts. If a contractor fails to pay the required wages, the government may withhold payments to cover the deficiency, and contractors can be debarred from future contracts for up to three years for willful violations.[12] Additionally, the DOL can require contractors to pay back wages to workers who were not paid the prevailing wage rate.[13]

IMPACT OF THE DBA ON EMPLOYEES AND EMPLOYERS

Effects on Employees: The DBA provides several important protections for workers on federally funded construction projects. Most significantly, it requires contractors to pay wages comparable to those earned by workers performing similar jobs in the local area. This requirement helps prevent contractors from undercutting local labor markets by bringing in lower-paid, out-of-area workers and establishes a wage floor that supports both construction workers and the surrounding local economy. Importantly, the concept of "prevailing wage" extends beyond base pay. It also includes bona fide fringe benefits—such as health insurance, pension contributions, and paid vacation—which can substantially increase a worker's overall compensation.[14]

Despite these protections, the DBA's coverage is limited. Because the DBA applies only to certain federally funded or federally assisted projects, many construction workers remain outside its scope. Critics also contend that the law's wage requirements may have indirect effects on employment opportunities.[15] Higher mandated wages can increase project costs, which in turn may lead to fewer projects being funded or fewer workers being hired as contractors attempt to manage their labor expenses.

Effects on Employers: For employers, the DBA can create a more level competitive environment. By requiring contractors on federal projects to pay prevailing wages, the DBA reduces the incentive for companies to win bids by relying on significantly lower-paid labor. This allows contractors who already pay competitive wages and benefits to compete for federal contracts without being undercut by low-wage competitors. In some cases, higher wages and benefits can also benefit employers by reducing employee turnover and attracting a more experienced and stable workforce, which may ultimately improve productivity and project outcomes.

At the same time, the DBA imposes meaningful obligations on contractors. Paying prevailing wages and providing required benefits can significantly raise labor costs, particularly in regions where local wage rates fall below the federally determined prevailing wage. Compliance also requires detailed recordkeeping, payroll reporting, and adherence to complex wage determinations, all of which can be administratively burdensome—especially for smaller contractors. Additionally, the DBA's fixed wage requirements limit employers' flexibility to adjust pay based on market conditions or project-specific considerations. These increased costs may ultimately reduce the number of projects that can be funded within a given budget, potentially limiting the overall volume of available work.

CONCLUSION

The Davis-Bacon Act has played a pivotal role in shaping labor standards on federal construction projects for nearly a century. While it has succeeded in protecting local wage standards and supporting skilled labor, it also imposes significant costs and administrative burdens on employers. The ongoing challenge is to balance the interests of workers, employers, and taxpayers in a way that promotes fair wages, efficient public works, and robust local economies.

[1] *United States v. Binghamton Constr. Co.*, 347 U.S. 171 (1954)

[2] *Universities Research Assn. v. Coutu*, 450 U.S. 754 (1981)

[3] *The Fair Labor Standards Act*, Chapter 1. A Brief History of the Fair Labor Standards Act

[4] *Id.*

[5] House Committee on Education and Labor, Legislative History of the Davis-Bacon Act, 87th Cong., 2d Sess., 1 (Comm. Print 1962)

[6] William G. Whittaker, *The Davis-Bacon Act: Issues and Legislation During the 109th Congress,* Cong. Rsch. Serv. RL33363, (Oct. 31, 2006)

[7] *District of Columbia v. DOL*, 819 F.3d 444, 446 (D.C. Cir. 2016).

[8] *Id.*

[9] *Id.*

[10] *District of Columbia v. DOL*, 819 F.3d 444, 446 (D.C. Cir. 2016)

[11] *Universities Research Assn. v. Coutu*, 450 U.S. 754, 759 (1981) .

[12] *Id.*

[13] DOL, Decision, *IN re EDWARDS FURNACE CO.*, No 77-28, 23 WH Cases 1055

[14] U.S. Code, 40 U.S.C. § 3141. Definitions

[15] William G. Whittaker, *The Davis-Bacon Act: Issues and Legislation During the 110th Congress*, Cong. Rsch. Serv. RL34526 (June 10, 2008)

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