

Building and Construction Industry Exemption from Withdrawal Liability

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Since its passage late in 1980, the Multiemployer Pension Plan Amendments Act (MPPAA) has proven to be a hindrance to the profitable operations of employers that contribute to multiemployer pension funds by imposing a surprise, and often expensive, obligation (the “withdrawal liability”) on employers across many industries. However, the construction industry is one of a few industries in which the impact of withdrawal liability upon employers has been eliminated.

Congress determined that the withdrawal of employers in the construction industry from pension funds would *not adversely* affect the funding of those pension funds. Congress adopted the “building and construction industry” exemption (Section 4203(b) of ERISA), fully exempting employers involved in the construction industry from withdrawal liability if the following conditions are met:

1. Substantially all employees (approximately 85 percent) with respect to whom the employer has an obligation to contribute under the plan performed work in the building and construction industry; and
2. The plan primarily covers employees in the building and construction industry; or
3. Is amended to provide that this subsection applies to employers described in this paragraph; and
4. The employer ceases to have an obligation to contribute under the plan; and
5. Does not resume such work for a period of five years after the date on which the obligation to contribute ceases.

Under these circumstances, an employer that ceases work and withdraws from a pension fund would *not* have withdrawal liability obligation.

Jackson Lewis attorneys are available to answer questions about ERISA and employers’ obligations.

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