



## Practical Insights: Is Your Multi-Employer Pension Plan Threatening to Terminate Early Retirement Benefits For Your Employees If You Withdraw From the Plan?

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### **Problem**

Some union trustees of labor-management multi-employer pension plans (“MEPS”) that are greatly under-funded are using the Pension Protection Act of 2006, (“PPA”) to threaten not to pay plan participants early retirement benefits if their employers withdraw from the plan. In fact, one pension fund is saying that its trustees soon may adopt a rule that future retirees who last worked in a bargaining unit that voluntarily withdraws from the pension fund risk elimination or reduction of benefits payable prior to age 65.

***How can a company respond to this type of threat by its multi-employer pension fund?***

### **Solution**

The solution to this problem lies with the definition of “critical status” under the PPA. Although plan amendments that reduce or eliminate an accrued benefit, including any early retirement benefit, generally are prohibited, one section in the PPA allows a plan sponsor to reduce benefits when the pension plan is in critical status. Generally, a plan is in critical status if the funded percentage of the plan – its ratio of present value of plan assets to the plan’s promised vested pension benefits – is less than 65 percent.

Here’s what you should do to verify whether your multi-employer plan really is in critical status.

- 1) Write the plan and ask: (i) when will the trustees consider implementing the proposed reduction of pre-retirement benefits rule; (ii) by what means may the employer and plan participants comment on the proposed rule; and (iii) will the Fund give you a copy of the proposed rule and a copy of the PPA provision that provides the basis for this proposed rule;
- 2) Obtain information, if available, from the pension fund about its most recent actuarial report and whether that report indicates that the Pension Fund is funded above 65 percent, and bring this information to the union’s attention;

- 3) Argue to the union that the plan is not in critical status and, therefore, the Fund may not eliminate early retirement benefits for employees in the bargaining unit;
  
- 4) Bargain with the local union to obtain an agreement to withdraw from the Pension Fund, and either obtain that concession or create an impasse for resolution under the dispute resolution provision of your collective bargaining agreement.