

Compensation and Benefits Insights



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“Exit Contribution” an End-Run Around *de minimis* Withdrawal Liability

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A recent ruling from the U.S. Court of Appeals for the Fourth Circuit, [Sheet Metal Workers’ National Pension Fund v. Four-C-Aire, Inc. \(4th Cir. July 3, 2019\)](#), provides that an “exit contribution” was owed by a participating employer in a multiemployer pension plan upon withdrawal from such a plan. This case is of note because there was no dispute by the plan that the participating employer did not owe a withdrawal liability. However, the court ruled that the collective bargaining agreement (CBA) and the trust agreement for the pension fund obligated the participating employer to pay an exit contribution before withdrawing from the plan.

Background

The participating employer, Four-C-Aire, Inc. (Four-C-Aire), employs members of a sheet metal workers union and signed onto an existing CBA. The CBA required that Four-C-Aire contribute to a multiemployer pension plan and incorporated the fund’s trust document into the CBA. The trust documents included a provision requiring Four-C-Aire to pay an exit contribution to the pension fund when (1) it ceased to have an obligation to contribute to the fund, and (2) as a result of the cessation of its obligation to contribute, it had an event of withdrawal under ERISA, but (3) it did not have to pay a statutorily-mandated withdrawal liability. The trust documents were unilaterally amended by the pension fund to provide that the exit contribution was independent of the CBA and continued to apply after the termination of the CBA.

In April 2016, the terms of the CBA expired and Four-C-Aire’s obligations to contribute to the fund ended. Four-C-Aire was not required to pay a withdrawal liability under ERISA’s *de minimis* rule, which eliminates the withdrawal liability certain employers would owe to the extent that their

Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan “stock drop” cases and other breach-of-fiduciary-duty class actions.

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calculated withdrawal liability is less than \$150,000. In August 2016, the fund notified Four-C-Aire that Four-C-Aire had a withdrawal event in 2016, and demanded an exit contribution of \$97,601.01. Four-C-Aire refused to pay the exit contribution, and the fund filed suit for alleged violations of the CBA.

Ruling

The U.S. District Court dismissed the case, ruling that the obligation to pay the exit contribution did not survive the CBA's expiration, the amendment was not properly incorporated into the trust documents, and the fund's unilateral power to modify the CBA was illusory and unenforceable. On appeal, however, the Fourth Circuit Court of Appeals found that the fund's complaint sufficiently alleged a violation of the obligation to pay an exit contribution. The court said that ERISA Section 515 requires that Four-C-Aire be held to the requirements of the CBA and the trust documents, which required payment of an exit contribution under the circumstances.

Takeaway for Employers

An employer considering participating in a multiemployer pension plan must carefully review the terms of the CBA and all the pension fund's trust documents and policies and procedures, as this case illustrates that the employer will be bound by the terms of these documents. As evidenced by this case, even if a withdrawing employer's liability is *de minimis*, a potentially substantial payment could still be required. Although exit contributions are unusual, participating employers should obtain copies of all pension fund trust and other documents to understand their obligations and options with respect to the CBA.

King & Spalding is happy to assist employers with reviewing their CBAs and related documents, as well as assist with any questions relating to this case or a potential exit contribution.

Webinar on PSCA's 2019 Non-qualified Deferred Compensation Survey Results

The Plan Sponsor Council of America (PSCA) recently published their [2019 NQDC Plan Survey](#) – the third annual report on non-qualified deferred compensation plans. The PSCA NQDC committee will conduct a webinar on **October 23, 2019 at 2:00 PM** eastern to review the results of the report. The survey is a unique source of unbiased, comprehensive, non-qualified plan benchmarking data which offers non-qualified plan design insights, including (but not limited to): eligibility practices, contribution formulas, funding methods, education, plan administration, and more. [Click here](#) to register.

October and November 2019 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

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Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such

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penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for October through November. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is usually delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
October 15	Medicare Part D Creditable Coverage Notice to Individuals	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to provide a written disclosure notice to Medicare eligible individuals and their dependents covered under the plan indicating whether their prescription drug coverage is creditable coverage.	Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals
October 15 (2 ½ months after extension granted)	Form 5500	Deadline for plan administrator to file Form 5500 for prior year if deadline was extended by filing a Form 5558.	Retirement Plans Health and Welfare Plans
	IRS Form 8955-SSA	Deadline for plan administrator to file Form 8955-SSA if deadline was extended by filing a Form 5558.	Retirement Plans
October 15 (9 ½ months after the previous plan year)	PBGC Premium Filing	Deadline for plan administrator to pay flat-rate or variable PBGC premium for current plan year.	Defined Benefit Plans

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Deadline	Item	Action	Affected Plans
November 1 (by the first day of open enrollment)	Summary of Benefits and Coverage for Health Plans that Require Reapplication	Deadline for group health plan administrator (for self-insured plans) or group health plan administrator or insurer (for fully insured plans) to provide a Summary of Benefits Coverage (SBC) if written application materials are required for renewal.	Group Health Plans and Health Insurance Issuers
November 14 (within 45 days after the close of the third quarter)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the third quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans with participant-directed investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the third quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
November 15 (the 15th day of the 11th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year if the trustee obtained a second 3-month extension by filing a Form 8868.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations