

NEWS

'Withdrawal Liability' May Rise After Supreme Court Decision

May 21, 2026 | [Allen Smith, J.D.](#)



Employers might have to pay much more in the future when withdrawing from [multiemployer pension plans](https://www.shrm.org/topics-tools/employment-law-compliance/supreme-court-to-hear-multiemployer-pension-plan-case-next-term) - (<https://www.shrm.org/topics-tools/employment-law-compliance/supreme-court-to-hear-multiemployer-pension-plan-case-next-term>). In a unanimous decision written by Justice Ketanji Brown Jackson, the U.S. Supreme Court ruled May 21 that actuarial assumptions for calculating [withdrawal liability](https://www.shrm.org/topics-tools/employment-law-compliance/supreme-court-to-hear-multiemployer-pension-plan-case-next-term) - (<https://www.shrm.org/topics-tools/employment-law-compliance/supreme-court-to-hear-multiemployer-pension-plan-case-next-term>) may be adopted after the last day of the plan year preceding the employer's withdrawal from the plan — a decision that in this case could result in a payment six times greater than what the employers thought they owed.

The decision “is a significant victory for plan sponsors of underfunded multiemployer pension plans and something that all contributing employers should be aware of, in terms of how their withdrawal liability exposure can significantly increase from participation in such plans,” said Seong Kim, an attorney with Seyfarth in Los Angeles.

The Supreme Court’s ruling increases both uncertainty and volatility for employers participating in multiemployer pension plans, said Carly Grey, an attorney with Ogletree Deakins in Washington, D.C. “The decision will affect employers differently. It favors plan funding and stability but introduces additional risk, uncertainty, and transactional friction for employers, particularly those considering exit or engaged in deals involving multiemployer plan exposure.”

Some employers may welcome the decision, especially those in industries where exiting the multiemployer pension fund is not realistic, because the decision may support plan stability by limiting the ability of other employers to withdraw on more favorable terms and leave behind greater underfunding, she added.

“But for other employers, that flexibility increases the risk of inaccurate withdrawal liability estimates because they are no longer based on initial assumptions. Employers will be forced to make business or transaction decisions based on information that could later change,” Grey said.

This is likely to increase the perceived risk of multiemployer plan participation, particularly in [merger and acquisition - \(https://www.shrm.org/topics-tools/tools/toolkits/managing-human-resources-mergers-acquisitions \)](https://www.shrm.org/topics-tools/tools/toolkits/managing-human-resources-mergers-acquisitions) contexts, she said. Buyers may adjust deal terms to account for the possibility of increased or less predictable withdrawal liability.

“The ruling may also prompt some employers to consider withdrawing sooner, rather than bear the risk of future assumption changes that could increase liability,” Grey said.

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Background

In this case, four employers contributed to the IAM National Pension Fund, a multiemployer pension plan serving employees who are covered by collective bargaining agreements with the International Association of Machinists and Aerospace Workers. Each employer withdrew from the fund between April and December 2018.

The [Employee Retirement Income Security Act - \(https://www.shrm.org/topics-tools/employment-law-compliance/the-successful-yet-much-litigated-erisa-turns-50 \)](https://www.shrm.org/topics-tools/employment-law-compliance/the-successful-yet-much-litigated-erisa-turns-50) (ERISA) requires employers that withdraw from an underfunded multiemployer pension plan to pay withdrawal liability. Withdrawal liability reflects the employer’s share of the plan’s unfunded vested benefits (UVBs) — in other words, the difference between the present value of the benefits owed to employees and the current value of the plan’s assets. The point of requiring employers to pay their share of the plan’s UVBs is to ensure plans do not become insolvent when employers withdraw.

This case involved the question of when actuarial assumptions may be selected for purposes of calculating withdrawal liability.

How that question is answered can make a big difference — in this case \$3 billion in the plan's UVBs as calculated using actuarial assumptions in January 2018 versus \$500 million using actuarial assumptions in November 2017.

Actuaries applied different “discount rates” in each year, resulting in the varying amounts. The discount rate is the interest rate used to discount future benefit payments to their present value. A higher discount rate reduces the value of the plan's UVBs.

In accordance with Section 1391 of ERISA, the fund assessed each employer's withdrawal liability as of Dec. 31, 2017, the last day of the plan year preceding the year in which they withdrew — the so-called measurement date.

The fund applied the 6.5% discount rate adopted in January 2018 to calculate their withdrawal liability. Using this rate, as compared to the previous 7.5% discount rate, dramatically increased the employers' withdrawal liability.

For example, M&K Employee Solutions was assessed withdrawal liability of about \$6.2 million, whereas it would have owed much less — \$1.8 million — using the prior actuarial assumptions and discount rate.

The employers challenged their withdrawal-liability assessments.

Arbitrators ruled in favor of the employers, but federal district courts disagreed with the arbitrators.

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Supreme Court's Ruling

The Supreme Court affirmed the lower courts, ruling that withdrawal liability can be calculated based on actuarial assumptions adopted after the measurement date.

Section 1391 provides various methods that plans can use to calculate withdrawal liability, the Supreme Court noted. “It does not mention actuarial assumptions at all.” The measurement date sets no deadline for the selection of actuarial assumptions, it decided.

“Because actuarial assumptions are tools used to calculate UVBs rather than hard data about the plan, they cannot be frozen on the measurement date,” the court said. “Section 1391's ‘as of’ requirement

sets the reference point for the factual inputs into the UVB calculation. It has no bearing on when actuaries must select the tools, including assumptions, they use to calculate a plan's UVBs."

Moreover, Section 1393, the section of ERISA that governs the use of actuarial assumptions for assessing withdrawal liability, confirms that the measurement date is not a deadline by which actuaries must select their assumptions. "Indeed, Section 1393 provides no deadline at all," the Supreme Court said.

Actuarial assumptions should reflect the actuary's knowledge as of the measurement date, the court explained. The relevant information about the plan's performance or macroeconomic conditions as they existed on the measurement date may not become available until later, it noted.

The employers argued that allowing actuarial assumptions after the measurement date will open the door to manipulation by plans and their actuaries. Multiemployer pension plans will retroactively select assumptions to increase withdrawing employers' liability, the employers maintained.

Unpersuaded, the Supreme Court said arbitrators could address many of the worst-case scenarios the employers put forward.

The Supreme Court relied on the plain language of the statute and declined to replace congressional choices with its own.

"The Supreme Court did not believe it was necessary to impose any guardrails, perhaps because the assumptions must still be based on information as of the measurement date," said Marcia Wagner, an attorney with The Wagner Law Group in Boston.

This decision is *M&K Employee Solutions v. Trustees of the IAM National Pension Fund*.

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