PITTA LLP
Labor, Employment & Employee Benefits Law Firm

# EMPLOYEE BENEFITS

IN FOCUS

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## SENATE CONFIRMS DANIEL ARONOWITZ TO LEAD EMPLOYEE BENEFITS SECURITY ADMINISTRATION

On September 18, 2025, the United States Senate confirmed President Donald Trump's pick for Assistant Secretary of Labor overseeing the Department of Labor's Employee Benefits Security Administration ("EBSA"), Daniel Aronowitz. EBSA regulates the health, retirement, and welfare benefits of 153 million American employees.

Aronowitz is a management liability insurance executive with experience defending employer sponsors of 401(k) plans from allegations of fiduciary breaches. At his hearing before the Senate Committee on Health, Education, Labor, and Pensions, Aronowitz identified three (3) goals he would tackle as leader of EBSA. First, he vowed to improve fiduciary law enforcement by ending "the practice of open-ended investigations that go on for years," "bias against [Employee Stock Ownership Plans]," and "regulatory abuse of common-interest agreements with plaintiff lawyers." Second, he pledged to "provide regulatory clarity" to plan sponsors and "end the era of regulation by litigation." He expressed the need for clarity on a number of issues, including alternative investments, such as private equity and cryptocurrency; the consideration of environmental, social, and governance factors; the fiduciary rule as applied to IRA rollovers; mental health parity; plan forfeitures; pension risk transfers; tobacco and vaccine surcharges and wellness programs; managing pharmacy benefit managers and health-care costs; and cybersecurity to protect participants' assets. Finally, Aronowitz promised to leverage the aforementioned proposed enforcement and regulatory clarity to expand employee benefits, which, in his words, requires "eliminat[ing] the ERISA litigation abuse that is turning benefit plans into liability traps."

Aronowitz's opening statement may be read in its entirety here.

## FINAL REGULATIONS DELAY ROTH CATCH-UP CONTRIBUTIONS TO 2027; COLLECTIVELY BARGAINED PLANS GET ADDITIONAL TIME

On September 15, 2025, the Internal Revenue Service ("IRS") and the Department of the Treasury ("Treasury") issued final regulations under sections 401(k), 403(b), and 414(v) of the Internal Revenue Code ("IRC") addressing the updates to catch-up contributions that were introduced by the SECURE 2.0 Act of 2022 ("SECURE 2.0") (the "Final Regulations"). The Final Regulations are available here.

IRC section 414(v) permits a retirement plan to allow catch-up eligible participants (aged 50 and over) to make additional elective deferrals that are catch-up contributions beyond the regular deferred contribution limits. SECURE 2.0 introduced a major change, requiring such eligible participants who earn over $145,000 in Federal Insurance Contributions Act ("FICA") wages for the preceding calendar year to make such catch-up contributions only on a Roth (after-tax) basis instead of on a pre-tax basis as their regular deferred contributions may be made.

As we previously reported in our September 2023 issue of *Employee Benefits in Focus* in an article titled "IRS Issues Transitional Relief to Defined Contribution Plan Sponsors with Respect to Catch-Up Contributions," the statutory effective date for the Roth catch-up requirement was for taxable years beginning after December 31, 2023, but the IRS provided transitional relief delaying enforcement of that rule. Click here to see a full copy of the article.

The Final Regulations have extended the transition period allowing plans to operate under a "reasonable, good faith interpretation" of the Roth catch-up provision until December 31, 2026. But for contributions in taxable years beginning after December 31, 2026, plans must be compliant with the Final Regulations. Note, however, the Final Regulations provide for special rules for collectively bargained plans, given that these plans typically do not have access to wage information for participants, so they need more time to comply with these requirements. For these plans, the mandatory Roth catch-up requirement under the Final Regulations *applies* to contributions made in taxable years beginning after the **later of** the first taxable year beginning after December 31, 2026 or the first taxable year that begins after the date on which the last of the collective bargaining agreement related to the plan that is in effect on December 31, 2025 expires (without regard to any extensions to such agreement). Additionally, if that plan is a multiemployer plan, IRC section 414(v)(7) *is deemed satisfied* until the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on November 17, 2025 expires (without regard to any extension to those agreements).

Other clarifications include:

- The initial Roth catch-up FICA wage threshold of $145,000 will be adjusted annually for cost-of-living increases, rounded to the next lower multiple of $5,000.
- If a plan allows any participant to make a mandatory Roth catch-up contribution, it must permit all catch-up-eligible participants to make designated Roth contributions.
- For plans that do not have a qualified Roth contribution program, a participant who is subject to the mandatory Roth requirement cannot contribute any catch-up contributions.

- The Final Regulations also provide special rules for nondiscrimination testing, allowing plans to limit pre-tax catch-up contributions for certain highly compensated employees to facilitate compliance.

The Final Regulations offer a pathway for correcting administrative errors where a contribution that should have been made on a Roth basis was mistakenly made on a pre-tax basis, provided that such errors are corrected timely. A "*de minimis*" failure of $250 or less does not require correction.

The Final Regulations also provide guidance on the "super catch-up" limits for plans that permit eligible participants who will be aged 60, 61, 62, or 63 during the taxable year, to have a higher catch-up limit of up to $11,250. This applies to taxable years beginning after December 31, 2024. The amount will be subject to cost-of-living adjustments in future years beginning after December 31, 2025.

## A TALE OF TWO WITHDRAWALS

The Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") requires an employer withdrawing from a multi-employer plan to pay its fair share of the plan's unfunded vested liabilities. How to calculate that "fair share" and determine who is the "employer" for withdrawal liability purposes are the subjects of two recent federal court decisions discussed below.

How to Calculate the "Fair Share"?

Over the past five years, several federal Circuit Courts of Appeals have rejected actuarial calculations of withdrawal liability that did not reflect the actuary's best estimate of the plan's anticipated earnings. *See, e.g. Sofia Erectors, Inc. v. Trs. of Ohio Operating Engr's Pension Fund*, 15 F.4th 407 (6th Cir. 2021). The Sixth Circuit revisited and reaffirmed this holding with a significant twist in *Ace-Saginaw Paving Co. v. Operating Engr's Local 324 Pension Fund*, No. 24-1288 (6th Cir., Aug. 6, 2025).

First, the Court affirmed an arbitrator and the district court in finding that the Fund actuary violated MPPAA by calculating withdrawal liability using factors unrelated to anticipated earnings—in this case, a policy intended to discourage withdrawals and to shift the maximum burden on to the withdrawing employer rather than remaining employers. The Fund did this by calculating withdrawal liability using a PBGC interest rate of 2.27% earnings rather than the Fund's own minimum funding calculations—the "funding method"—that anticipated a 7.7% return to investments. The withdrawing employer asked the arbitrator and courts to order the Fund to recalculate the assessed liability using the funding method instead.

They declined, in part. While courts have held it "reasonable for an actuary to use the same interest rate for calculating minimum funding and withdrawal liability," explained the Court, "it is also permissible for the two assumptions to diverge ... because some factors unique to withdrawal liability might cause an adjusted interest rate assumption to result in a more reasonable calculation." For example, "actuaries calculate withdrawal liability on a different time horizon than minimum funding," offered the Appeals Court citing expert testimony, and this factor allows the use of a different interest rate assumption." So, remanding the case to the Fund for a new calculation, the Court instructed that "its actuary may deviate from the assumptions and methods used to calculate minimum funding ... limited to differentiating factors that improve the accuracy of the withdrawal liability calculation ... of the amount that Ace had ... to pay for its share of the Fund's UVBs [unfunded vested liabilities] as they come due."

Who is the "Employer"?

Most courts faced with the question of who is the employer against whom withdrawal liability can be assessed typically focus on the technical requirements specified in the MPPAA. A recent decision from a Missouri federal district court takes an interesting real-life approach. *Longroad Asset Management LLC v. Boilermakers Nat'l Pension Trust*, No. 4:23-cv-38 (W.D. Mo., Aug. 9, 2025).

Longroad was a "vulture" investment family of partnerships acquiring distressed companies through a dizzying array of related entities. One such failing company was Broad Street Tank, acquired by an entity known as Longroad Limited Partnership ("LLP") through a chain of other Longroad entities. When Broad Street withdrew from the Fund, the Fund assessed a host of Longroad companies as liable "partners in fact." While the District Court granted summary judgment to most of the defendants, against LLP the Court granted summary judgment in favor of the Fund.

Applying MPPAA's common control test that links entities with overlapping ownership under certain circumstances, the Court found that LLP satisfied all elements for common control joint liability. The Court explained:

> Here, the undisputed facts establish that the Limited Partnership was more than a passive investor because it actively managed its portfolio companies. The private placement memorandum clearly outlines the Limited Partnership's investment strategy including but not limited to "active management of the reorganization process," "achiev[ing) effective control over the governance of the business," and providing the "strategic and operational direction necessary to grow the business, maximize cash flow and improve the overall prospects of the business."

Accordingly, the Court found that LLP's conduct suggested more involvement than passive investment activity and thus satisfied the "plus" factor under what is known as the "investment plus" framework. Moreover, the Court noted that LLP's activities were continuous and regular over multiple years with the primary purpose of generating profit for its limited partners. Thus, the Court found that LLP was an "employer" for purposes of MPPAA's withdrawal liability provision.

# A FEW REMINDERS

**(Based on calendar-year plans)**

These reminders are for informational purposes only and are not intended to replace your regular compliance calendar as they do not include all deadlines that may be applicable to your plan.

## SEPTEMBER

### HEALTH AND WELFARE PLANS

- **Summary Annual Report ("SAR")**
  - September 30, 2025 is the deadline by which health and welfare plans must distribute the SAR to all plan participants.

### DEFINED BENEFIT PLANS

- **Minimum Funding Contributions**
  - September 15, 2025 is the deadline by which minimum funding contributions are due.
- **Actuarial Certification**
  - September 30, 2025 is the last day by which the actuary must certify the 2025 AFTAP to avoid October 1, 2025 presumption that the 2025 AFTAP is less than 60%.
- **SAR**
  - September 30, 2025 is the deadline by which the SAR must be distributed to all plan participants unless the defined benefit plan is covered by the Pension Benefit Guaranty Corporation's ("PBGC") termination insurance program; PBGC-covered DB plans are required to furnish their participants with an annual funding notice instead.

### DEFINED CONTRIBUTION PLANS

- **SAR**
  - September 30, 2025 is the deadline by which the SAR must be distributed to all plan participants.

## OCTOBER

### ALL PLANS

- **Form 5500 Extended Deadline**
  - October 15, 2025 is the date by which the Form 5500 for the 2024 plan year is due if a Form 5558 extending the due date was filed.
- **Form 8955-SSA Extended Deadline**
  - October 15, 2025 is the due date for Form 8955-SSA and participant statements for the 2024 plan year if a Form 5558 extending the due date was filed.

### HEALTH AND WELFARE PLANS

- **Creditable Coverage Notices**
  - October 15, 2025 is the due date by which plan sponsors of group health plans that provide prescription drug coverage to Medicare Part D-eligible individuals must disclose whether the prescription drug coverage is creditable.

### DEFINED BENEFIT PLANS

- **Third Quarter Contributions**
  - October 15, 2025 is the deadline for third quarter contributions.
- **Retroactive Amendment to Correct Prior Year Coverage/Nondiscrimination Failures**
  - October 15, 2025 is the deadline by which to make a retroactive amendment to correct prior year coverage/nondiscrimination failures.
- **Pension Benefit Guaranty Corporation ("PBGC") Premium Filing and Payment**
  - October 15, 2025 is the deadline by which to file the prescribed premium information and pay the premium due in accordance with PBGC's Premium regulations and instructions.
- **PBGC Form 200**
  - October 25, 2025 is the last day by which to file the PBGC Form 200 if a single employer plan sponsor did not make the October 15, 2025 required contribution and the FTAP is less than 100% if the total amount in unpaid contributions (including interest) exceeds $1 million.

### DEFINED CONTRIBUTION PLANS

- **Notice of Intent to Use Section 401(k) and Section 401(m) Safe-Harbor Formula (if plan is a "safe-harbor" 401(k) plan)**
  - October 3, 2025 is the earliest date by which to send safe harbor notices for 401(k)/401(m) nondiscrimination safe harbor plans and plans with eligible automatic contribution arrangements.

- **Retroactive Amendment to Correct Prior Year Coverage/Nondiscrimination Failures**
  - October 15, 2025 is the deadline by which to make a retroactive amendment to correct prior year coverage/nondiscrimination failures.

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**To Our Clients:** If you have any questions regarding any of the matters addressed in this newsletter, or any other labor or employment related issues in general, please contact the Pitta LLP attorney with whom you usually work.

**To Our Clients and Friends:** To request that copies of this publication be sent to a new address or fax number, to unsubscribe, or to comment on its contents, please contact Aseneth Wheeler-Russell at arussell@pittalaw.com or (212) 652-3797.