

## COVID-19: CONSIDERATIONS FOR U.S. CONTRIBUTING EMPLOYERS TO MULTIEMPLOYER PLANS

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The COVID-19 pandemic has had a significant financial impact on business and individuals around the globe, with global financial markets seeing significant drawbacks in March 2020 alone. That impact has also been felt by U.S. employers who contribute to multiemployer pension plans, as well as the plans themselves. Below are a few issues that U.S. contributing employers to multiemployer pension plans should keep in mind in these volatile times:

1. Consequences of Changes in Funded Status. Even before the COVID-19 pandemic, many multiemployer pension plans were operating in critical or critical and declining funded status, and the market fluctuations as a result of the COVID-19 pandemic will only exacerbate those funding shortfalls. Contributing employers should anticipate that those shortfalls may result in additional surcharges becoming payable on their monthly contributions (as a result of the Pension Protection Act of 2006) as well as increased estimates of potential withdrawal liability.
2. Withdrawal Liability. With many contributing employers implementing layoffs or other workforce reductions, there may be questions as to whether such reductions may result in withdrawal liability under the applicable multiemployer pension plan. Withdrawal liability is due upon a complete or partial withdrawal from a multiemployer pension plan. A complete withdrawal occurs when a contributing employer permanently ceases all operations covered by the plan or no longer has an obligation to contribute under the plan. Therefore, layoffs and/or temporary shutdowns should not trigger complete withdrawals unless and until those layoffs and shutdowns become permanent. Partial withdrawal occurs upon a 70% contribution decline or a partial cessation of an obligation to contribute under the plan. Fortunately, the 70% contribution decline is measured over a three year period so that a 70% decline partial withdrawal does not occur unless there are three consecutive years of 70% declines from a high base year as established by the statute; therefore, layoffs or shutdowns in 2020 alone should not trigger partial withdrawal liability, but may contribute to a historic or future measurement of decline. In addition, partial withdrawal may occur when a contributing employer permanently ceases to have an obligation to contribute (i) under at least one (but not all) collective bargaining agreements that require plan contributions or (ii) with respect to at least one (but not all) facilities which require plan contributions, , but continues to perform work in the jurisdiction of the labor

agreement of the type for which contributions had previously been required or transfers such work to another location within its controlled group. Similar to the complete withdrawal analysis, layoffs and/or temporary shutdowns should not trigger this type of partial withdrawal unless and until those layoffs and shutdowns become permanent.

3. **Paid Leave.** The Families First Coronavirus Response Act (“FFCRA”), enacted on March 18, 2020, provides a combination of benefits to help U.S. employees during the COVID-19 pandemic. In particular, the FFCRA requires employers with fewer than 500 employees to provide paid sick and Family and Medical Leave Act (FMLA) leave to employees who are generally unable to work as a result of the COVID-19 pandemic. Full-time employees are eligible for 80 hours of leave and part-time employees are eligible for the number of hours they work, on average, over a two-week period. Specific to employers that are subject to multiemployer collective bargaining agreements, the FFCRA provides that paid sick or FMLA leave may be satisfied by making contributions to a multiemployer plan consistent with its collective bargaining agreement or bargaining obligations, based on what paid leave each of its employees is entitled to while working under the agreement, provided that plan allows employees to receive pay for the FMLA leave.

## RELATED PRACTICE AREAS

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## MEET THE TEAM



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