14. Multiemployer Plans

Introduction

A multiemployer plan is typically an employee pension or welfare plan that covers the workers of two or more unrelated companies in accordance with a collective bargaining agreement. Contributions to support such plans are negotiated at the initiative of a labor union or a group of labor unions representing the workers of a number of companies, usually in a given geographic area. The workers are usually engaged in the same kind of employment (e.g., a skilled craft such as carpentry or acting).

There are two broad types of multiemployer plans. The first, a welfare benefit plan, may provide group life insurance; disability insurance; coverage for hospitalization, surgical, and/or medical costs; prepaid legal services; vacation; or unemployment benefits. The other, a pension plan, is designed to provide retirement income benefits. The multiemployer concept can also be used to provide other benefits. Its collective approach has been used effectively in areas such as employee training.

Multiemployer plans are set up under sec. 302(c)(5) of the Labor-Management Relations Act of 1947, commonly known as the Taft-Hartley Act. This law requires that the plans be governed by a board of trustees made up of employer and union representatives, each having equal representation.

The first multiemployer plan was probably an employer-funded pension plan started in 1929 by Local 3 of the Brotherhood of Electrical Workers and the Electrical Contractors Association of New York City. Subsequently, certain negotiated plans developed in the 1930s and 1940s in industries such as the needle trades and coal mining. Multiemployer pension plans grew after World War II with the passage of Taft-Hartley and a court ruling under federal labor law that established benefits as a mandatory subject of collective bargaining. By 1950, multiemployer pension plans covered 1 million workers. Participation under these plans rose to 3.3 million workers in 1960 and to 10.1 million active workers and retirees in 1991 (U.S. Department of Labor, 1995). The U.S. Department of Labor (DoL) estimates that there are approximately 2,994 multiemployer plans (U.S. Department of Labor, 1995). There is likely at least an equal number of multiemployer welfare plans and a growing number of multiemployer plans that provide annuity funds (individual account plans), supplementary unemployment insurance, and legal benefits.

There are also nonnegotiated multiemployer plans, which have been established by certain employers that have chosen, on their own initiative, to provide their employees with a benefit package. Nonnegotiated plans are common in the nonprofit area among religious, charitable, and educational institutions. They are categorized as multiple employer plans under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), and are generally subject to the same legal rules as single employer plans.

Plan Characteristics

In a multiemployer plan, there must be at least two companies and at least two employees, but there is no maximum limit. Most participants in multiemployer pension plans are in large defined benefit plans. DoL reports that in 1987, the latest year for which data are available, nearly 92 percent of the 6.5 million active participants were in plans with 1,000 or more participants per plan, and over 80 percent of participants were in defined benefit plans (Turner and Beller, 1992).

Multiemployer plans are concentrated in certain industries, where there are many small companies with each too small to justify an individual plan. They are also found in industries in which, because of seasonal or irregular employment and high labor mobility, few workers would qualify under an individual company's plan if one were established. For example, construction workers are commonly hired by a given contractor for only a few weeks or months. When the job is completed, the worker may be unemployed until another contractor needs his or her particular skills or talent.

There is frequently more than one multiemployer plan within each large industry. Multiemployer plans may cover industry employees on a national, regional, or local basis, and some cut across several related industries (e.g., crafts or trades in one geographic area). Many plans cover a trade or craft rather than an entire industry. However, some plans that embrace whole industries or a large part of an industry include those of the American Federation of Television and Radio Artists, Communications Workers of America, International Ladies Garment Workers Union, United Paperworkers International Union, and Amalgamated Clothing Workers.

Many multiemployer plans exist in the following manufacturing industries, as defined by DoL: food, baked goods, and kindred products; apparel (or needle trades) and others; printing, publishing, and allied industries; finished textile products; leather and leather products; lumber and wood products; furniture and fixtures; and metalworking.

In nonmanufacturing industries, multiemployer plans are common in mining; construction; motor transportation; wholesale and retail trades; services; entertainment; and communications and public utilities. The construction industry has the highest concentration of multiemployer plan participants. In 1987, 38 percent of all active multiemployer plan participants were in construction, followed by transportation at 14 percent (Turner and Beller, 1992).

Qualified Plan Rules

ERISA and the IRC set out rules that multiemployer plans, like single employer plans, must follow to qualify for preferential tax treatment. The rules govern fiduciary responsibility, disclosure and reporting, eligibility, vesting, benefit accrual, funding, coverage and participation, integration, and plan termination.

Some of the requirements– such as those for fiduciary responsibility and disclosure and reporting– are essentially the same for both types of plans, while other requirements differ. Benefits of the union-represented participants in multiemployer pension plans are generally deemed to meet the tax code's nondiscrimination standards, but the coverage for any other employees (e.g., the staff of the sponsoring union or of the fund itself) will have to meet the generally applicable nondiscrimination tests. (For further discussion of nondiscrimination requirements, see chapter 12; chapters 3, 12 and 13 address most of the multiemployer plan rules.)

Establishing the Plan

Once a union and various companies agree to set up a multiemployer plan, the first step is usually to negotiate how much each employer will contribute to the plan. Employer and union representatives then adopt a trust agreement that establishes a board of trustees, defines the board's powers and duties, and covers the affairs of both the trustees and the pension or welfare plan. An attorney and an accountant assist in establishing a trust fund to accept company contributions. Benefit and actuarial consultants assist the trustees in working out plan details and determining a supportable benefit level. The trustees probably will retain a professional investment advisor or portfolio manager to ensure competent asset management. The trustees may also hire a salaried plan administrator and staff or retain an outside administration firm to manage the plan and handle day-to-day details such as the collection of employer contributions and employee claims, payments, recordkeeping, and inquiries. Finally, the trustees must adopt a formal plan document and publish a booklet in lay language informing employees of plan benefits, eligibility rules, and procedures for filing benefit claims.

Like a corporation's board of directors, a board of trustees sets overall plan policy and directs the plan's activities. Trustees are responsible for proper fund management. They may delegate certain of their duties and functions, including the management of plan funds, but they bear ultimate responsibility for all actions taken in their names. Fund management is a serious responsibility, since vast sums of money may be involved and pensions or other benefits of hundreds or thousands of people are at stake. Trustees are bound by rigid fiduciary rules of honesty and performance. They are required by both ERISA and the Taft-Hartley Act to act on behalf of plan participants as any prudent person familiar with such matters (i.e., financial affairs) would act.

Contributions and Benefits

Plan contributions are normally made by the employers participating in the collective bargaining agreement. Occasionally, employees are required or permitted to make additional contributions to welfare plans (e.g., during short unemployment periods). The employer's contribution amount is determined through negotiations and fixed in the bargaining agreement. It is usually based on some measure of the covered employee's work (e.g., $1 for each hour worked by each employee). All the contributions are pooled in a common fund that pays for the plan benefits. Investment earnings augment the fund. A multiemployer plan by virtue of its size often can undertake certain forms of investment that are not available to a small fund or a plan established by a single company employing only a few workers.

Companies participating in the same multiemployer plan often make equal contributions. However, some large national or regional multiemployer plans provide several levels of benefits that require different levels of employer contributions. As a result of special circumstances, a company may be required to make higher contributions than other participating companies or its employees may receive lower benefits. For example, a company with a large number of older workers that brings the group into an established multiemployer pension plan might be required to make higher contributions because of the substantial past service liabilities of its older workers who are approaching retirement. However, in general, one hallmark of a multiemployer fund is the cross-subsidy among employers that usually contribute at the same rate for all their employees who are at the same benefit level regardless of their actuarial costs.

Reciprocity

Normally, pension credits cannot be transferred from one multiemployer plan to another unless the trustees of the various plans have negotiated reciprocity agreements. Under such agreements, a worker can shift from employer to employer and among different plans without losing pension credits. About 75 percent of the workers covered by multiemployer health, welfare, and pension programs in the construction industry were covered by reciprocity agreements in 1983. Many other multiemployer plans are also industrywide. Still others are adopting reciprocity agreements at an accelerating rate as international unions continue to encourage these arrangements.

Benefits

Benefit formulas under multiemployer plans may vary: they may be a flat-dollar amount for each year of service, or they may base benefits on earnings. (For further discussion of benefit formulas, see chapter 4 on pension plans.) About 75 percent of multiemployer plans (with 65 percent of multiemployer plan workers) base benefits on length of service and not on earnings level. This is partly because the range of earnings for workers covered by multiemployer plans tends to be narrower than that for workers covered by single employer plans. Under multiemployer plans that do not base benefits on pay, the need to keep individual earnings records is eliminated; the contribution rate for all employees at a given benefit level is usually identical.

Most multiemployer plans suspend pension benefit payments to retirees in their jurisdictions who work in the same trade or industry while receiving pensions. The restriction is intended to prevent retirees from competing for jobs with active workers or practicing their skills in the nonunion sector of the industry. Under rules issued by DoL, a multiemployer plan may suspend benefits for a retiree who completes 40 or more hours of service in one month under certain circumstances, such as: in an industry in which other employees covered by the plan were employed and accrued benefits under the plan at the time benefit payments commenced or would have commenced if the retired employee had not returned to employment; in a trade or craft in which the retiree was employed at any time under the plan; and in the geographic area covered by the plan at the time benefit payments commenced or would have commenced if the retired employee had not returned to employment.

Advantages of Multiemployer Plans

Multiemployer plans offer attractive portability features. Employees may carry pension credits with them as they move from company to company. Thus, they can earn pensions based on all accumulated credits, even if some of their former employers have gone out of business or stopped making plan contributions. Similarly, continuity of coverage can be assured for other benefits, such as medical insurance, when the worker switches jobs within the same industry. Multiemployer plans may also provide an incalculable advantage to employees of small companies, who might not receive benefits if multiemployer plans did not make benefit programs more affordable for their employers.

There are several advantages for employers who participate in multiemployer plans. First, economies can be achieved through group purchasing and simplified administration. Second, benefit and labor costs throughout a region or even an industry may be stabilized. This can help reduce employee turnover, because workers will not be attracted to other jobs by the promise of better benefits elsewhere. As with all benefit plans qualified under the IRC, company contributions to a multiemployer plan are generally tax deductible.

Conclusion

The years of heavy multiemployer plan growth are probably over. The decline of unionized workers in many sectors is clearly one reason. Another is the general leveling off of pension plan establishment among all employers. In the future, minimal growth will likely occur in the aggregate as smaller numbers of new workers come under multiemployer plan protection. Certain industries, such as entertainment, in which employees work irregularly, and small manufacturers, retail trade, and transportation– particularly mass transit– may experience heavier than average growth.

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