

Supreme Court Expands Flexibility for Multiemployer Plans in Setting Withdrawal Liability Assumptions

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KEY POINTS

- The Supreme Court held in *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund* that MEPPs may adopt actuarial assumptions after the measurement date when calculating withdrawal liability.
- The decision allows MEPP actuaries to set or revise discount rates after the measurement date and apply them retroactively, so long as they are supported by data and actuarial standards.

“Prediction is easy — being right is hard.” The Supreme Court’s May 21, 2026, decision in the multiemployer withdrawal liability space affirmed this principle. In *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, the Court held in a unanimous decision that multiemployer pension plans (MEPPs) may use actuarial assumptions adopted after the “measurement date” to calculate an employer’s withdrawal liability, so long as those assumptions are reasonable and represent the actuary’s “best estimate” of the MEPP’s anticipated experience. The decision provides MEPPs and their actuaries with greater flexibility to set discount rates. Downstream effects may include significant financial consequences for withdrawing employers and plan trustees alike.

BACKGROUND

When contributing employers withdraw from MEPPs, the plan assesses “withdrawal liability,” which represents each employer’s share of unfunded vested benefits (UVBs). UVBs are funding shortages relative to accrued benefits. The calculation of withdrawal liability is based in part on hard numbers — plan assets or the number of participants; however, the discount rate applied in determining the present value of benefit payment obligations is a significant determinant of the withdrawal liability amount, and the discount rate is set by the plan’s actuaries based on actuarial assumptions and economic forecasts. Market and funding information available at the time of the actuaries’ determination of the discount rate can be key. The Employee Retirement Income Security Act (ERISA), which governs MEPPs, is clear that the measurement of UVBs is “as of” the last day of the plan year preceding withdrawal (for example, for a calendar year plan, the measurement date for an employer’s withdrawal at any time in 2026 is December 31, 2025). But must a plan have established the applicable actuarial assumptions and set the discount rate on or before the measurement date, or can these factors be determined later with retroactive effect?

THE DISPUTE

The four petitioning employers in *M & K Employee Solutions* argued that ERISA’s as-of language required all

actuarial assumptions — particularly the discount rate — to be locked in on or before the UVB measurement date. The employers wanted to apply the higher 7.5% discount rate that was in place on the actual measurement date, while the MEPP applied a 6.5% discount rate, which it arrived at after the measurement date but deemed it to be the rate “as of” the measurement date. The employers’ position would lead to \$500 million of UVBs; the MEPP’s position would find \$3 billion of UVBs. Separate arbitrations for each of the four employers found in favor of the employers. The district court rejected the arbitrators’ decisions and held that MEPP actuaries could apply assumptions adopted after the measurement date in determining withdrawal liability “as of” the measurement date. The Court of Appeals for the D.C. Circuit affirmed.

WHAT SCOTUS HELD

The Supreme Court disagreed with the employers and affirmed the lower court rulings. Writing for the Court, Justice Ketanji Brown Jackson reasoned that while factual data (e.g., number of participants and asset values) can and must be set on the measurement date, actuarial assumptions and discount rates are predictive judgments that require updated data and adequate time to formulate. Further, ERISA requires actuaries to make a “best estimate” of UVBs and apply reasonable assumptions, but the as-of wording in ERISA §4211(b)(2)(E)(i) does not impose the measurement date as a deadline for doing so. Accordingly, the Court sided with the MEPP, allowing actuarial assumptions arrived at about a month after the measurement date to be used.

WHY THIS MATTERS: DISCOUNT RATES DRIVE DOLLARS

The case underscores the sensitivity of withdrawal liability to discount rates. One employer’s withdrawal liability increased from approximately \$1.8 million to \$6.2 million due solely to the change in discount rate from 7.5% to 6.5%.

The Court’s decision confirms that it is permissible for MEPPs to adopt discount rates after the measurement date, if supported by data and actuarial standards. The Court reckoned that the arbitration process provided a sufficient remedy for withdrawing employers alleging that funds applied intentionally low discount rates to increase withdrawal liability.

KEY TAKEAWAYS

- MEPP trustees and actuaries may adopt discount rates after the measurement date and apply them retroactively to the preceding plan year. This discretion, however, is conditioned on the reasonableness of actuarial assumptions and must reflect the actuary’s knowledge as of the measurement date.
- Future disputes will weigh the consistency of application of valuation metrics, justifications for changing discount rates, the facts and circumstances surrounding rate changes, and other factors.
- Employers should consult with counsel and financial advisers before withdrawing from an MEPP. Discount rate applications may dramatically affect withdrawal liability payments and may change after the effective date of withdrawal.

CONCLUSION

The Supreme Court’s decision in *M & K Employee Solutions* significantly narrows the grounds on which employers can challenge withdrawal liability assessments based solely on the timing of assumption changes. MEPPs can now rely on the ability to adjust assumptions after the measurement date, but they must do so within the bounds of

reasonableness and actuarial best estimate standards. Employers should respond by enhancing their monitoring, modeling, and substantive challenges to the assumptions themselves, rather than relying on technical timing arguments.

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