

November 19, 2009

TCRS 2009-12: USERRA Benefits Under Title IV of ERISA

On November 17, 2009, the Pension Benefit Guaranty Corporation (PBGC) published a final rule that amends the existing PBGC rule regarding benefits payable in terminated single employer pension plans covered by the PBGC as it relates to participants serving in the uniformed services at the time their pension plan terminates.

Background

Under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), the PBGC guarantees a benefit only if the participant satisfies the conditions for entitlement to the benefit before or at the time the plan terminates. The amount of benefits paid by the PBGC under a terminated single employer plan is generally determined as of the plan's termination date.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was enacted October 13, 1994 to protect certain rights and benefits of participants who leave civilian employment to serve in the uniformed services and ensures that these participants can seek employment without discrimination as a result of such service. Under USERRA, if a participant leaves his or her job to serve in the uniformed services, the participant is generally entitled to reemployment by his or her previous employer. Upon reemployment within the bounds established by USERRA, the participant would be entitled to receive credit for the benefits that would have accrued during the period of military service had the participant continued in employment.

To address the issue regarding the PBGC's guarantee of benefits for participants serving in the uniformed services at the time the pension plan terminates (and before the time the participant can exercise his or her reemployment rights under USERRA), the PBGC is providing an exception under this final rule.

PBGC Final Rule – Great News for Affected Participants

According to the final rule, so long as the participant is reemployed within the time limits prescribed by USERRA, even if the reemployment occurs after the plan's termination date (bankruptcy filing date, in the case of the bankruptcy of a covered plan sponsor filed on and after September 16, 2006), the PBGC will treat the participant as having satisfied the reemployment conditions as of the plan's termination date. Thus, the participant's benefits would be guaranteed for periods up to the plan's termination date.

This final rule is effective December 17, 2009 and will apply to reemployments covered under USERRA initiated on or after December 12, 1994 (the effective date of USERRA). This is great news for affected participants. Starting December 17, 2009, the PBGC will start adjusting final benefit determinations of affected participants and make back payments with interest.

The PBGC emphasizes that the scope of this final rule is very narrow. It only applies to the unique circumstances affording special protection to participants serving in the uniformed services entitled to benefits under USERRA.

Additional PBGC Guidance

The PBGC will be providing guidance on how participants can establish their entitlement to benefits under USERRA for purposes of their ERISA Title IV benefit.

On a related matter, the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) amended the Internal Revenue Code with respect to the provision of certain benefits under employee pension benefit plans for participants who die or become disabled while performing qualified military service. The PBGC indicated that it may provide additional guidance in the future regarding HEART provisions under Title IV of ERISA.

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