Proskauer Benefits Brief: Withdrawal Liability – What It Is and Why It Matters

January 13, 2026

Next week, the Supreme Court will hear oral argument in its first withdrawal liability case in 30 years. In this first installment of a multi-part series, senior counsel Neil Shah and partner Justin Alex explain what withdrawal liability is, why it matters, and the key considerations to look out for going forward.

Neil Shah: Welcome to the Proskauer Benefits Brief, legal insight on compensation and benefits. I'm Neil Shah, senior counsel at Proskauer.

Justin Alex: And I'm Justin Alex, a partner at Proskauer.

Neil Shah: Later this month, the Supreme Court will hear our argument in the first withdrawal liability case in roughly 30 years. The question in the case is whether there's a deadline for picking the actuarial methods and assumptions used to calculate withdrawal liability.

Now, if you're thinking, what is withdrawal liability, and why should I care? Well, this series is for you. We're going to cover what it is, how plans calculate it, who can be on the hook, and how it comes up in mergers and acquisitions, private credit, labor negotiations, real estate and various areas of practice.

Now, you may never love withdrawal liability, but by the end, we hope that you'll know what to do if it ever comes knocking. So, Justin, why don't you give us a synopsis of what withdrawal liability is and how it comes up in our own practice?

Justin Alex: So, withdrawal liability is the payment that an employer might have to make when it stops contributing to a multi employer pension plan. Multi employer pension plans are collectively bargained plans that certain employers contribute to pursuant to their CBAs.

Now, when Congress was looking into how these plans operate, they realized that there was a problem that they needed to solve for, which was that if employers could leave these underfunded multi employer plans without paying their share of the underfunding, the plans could quickly spiral into a negative position.

So today, when an employer withdraws, the plan will generally assess a share of its unfunded vested benefits, which reflects the gap between the value of earned benefits and the plan assets against the employer that's withdrawn. The number for withdrawal liability can vary greatly, even into the billions for very large cases.

And if an employer wants to challenge whether it owes withdrawal liability or how it was calculated, there are specific timelines and steps to follow and missing them can waive defenses to the withdrawal liability assessments as a whole. We spend a lot of time at Proskauer on deals, disputes and negotiations where this issue shows up for nearly everyone involved, whether it's employers that are contributing to the plans, their corporate affiliates or third parties who might transact with them, as well as the pension plans who may be owed these amounts.

Neil Shah: Let's talk some numbers. Almost 200,000 employers contribute to multi employer pension plans every year. In 2023, which is the most recent year for which we have fairly complete data, these plans received almost $900 million in withdrawal liability payments, and they assessed another $1.2 billion in withdrawal liability on the over 1,200 employers that withdrew that year. So, this is an issue that has significant financial consequences for a lot of employers that are out there.

Now, where it gets interesting is that the withdrawing employer is not the only party that may be at risk. Other affiliate companies can be jointly and severally liable, not just the withdrawing employer. And the governing rules and how they apply are quite technical and often require a fact intensive analysis. In some asset deals, successor or alter ego theories can bring a buyer into the picture, depending on notice and continuity. In other circumstances, owners themselves can face personal exposure. And we're going to devote a full episode to mapping all these risks with real world examples.

Justin Alex: Now, Neil, there's one process point that matters starting from day one. Plans assess withdrawal liability and set an installment schedule, and payments usually start within a short window after that, even if the employers want to dispute the assessment. That pay now, dispute later framework has real cash flow implications and also interacts with covenants, defaults and settlement leverage. We'll unpack the annual payment formula and the 20 year payment cap concept in a later episode.

Neil Shah: Now, this isn't just about employers and plans. Many multi employer plans have long term obligations to retirees, even if contributions shrink as industries change and investment returns vary. Withdrawal liability is designed to help cover part of the funding gap. In other words, every dollar recovered helps stabilize promised benefits for plan participants and beneficiaries. So, Justin, why don't you tell us a little bit about how withdrawal liability comes up in your own practice?

Justin Alex: Sure. So, I really see withdrawal liability come up in two contexts. One is when representing employers with respect to their ongoing obligations to contribute to multi employer pension funds, where they need to track and consider what their potential withdrawal liability exposure is and think about how that impacts various business decisions that they're thinking about implementing. For example, whether to expand into new markets or new business areas, or to potentially close facilities or contract their operations. Because they need to be aware of how the withdrawal liability might be triggered and what might be owed if they decide to take those business steps.

The other area where I see it come up a lot are in M&A transactions and financing transactions, where parties on both sides of the transaction need to be aware of what the potential withdrawal liability is and what the impact of the transaction might be on that liability, so that they're going into it with their eyes wide open and don't get caught unexpectedly with a liability that they didn't see on the horizon.

On top of that, once withdrawal liability is actually triggered, we often spend a lot of time working with our clients on assessing the calculation of the withdrawal liability and whether there's any potential errors in it that the party that's been charged with the withdrawal liability might want to dispute, because that impacts how and when an employer needs to take certain steps if they disagree with the withdrawal liability assessment.

But we don't just represent employers and financial counterparties to transactions with respect to withdrawal liability. The one thing that makes our practice unique is that we also represent a number of multi employer pension funds with respect to their withdrawal liability. Neil, do you want to talk about how this comes up for pension funds?

Neil Shah: Sure. So as part of our practice, we represent a very large number of multi employer pension plans that are out there, from some of the smaller ones to some of the largest in the industry and just as in the ordinary course, you will have employers withdrawing from these plans for one reason or another, either because their business is in decline, and they're going out of business; they might be deciding to go non union; they might be reorganizing their operations; a whole host of reasons.

We are there at the ground level. We are advising the plan on whether and when to assess the withdrawal liability, if that withdrawal liability is not paid. We are proactive in taking steps to identify either individuals or entities that can be held liable for those amounts and then pursuing them in federal court to collect those amounts. Should the employers challenge the amount of withdrawal liability that has been assessed, we are active in arbitration to defend the plan's position and then proceed through all stages of appeals so that the listeners have a sense of what those issues entail. Employers often challenge the assumptions that the plan's actuary uses to calculate the withdrawal liability. They may argue that they never actually withdrew from the plan in the first place. They might argue that a particular statutory exemption — such as one for asset transactions or for employers that have liquidated their assets or become insolvent — they might argue that those exceptions were misapplied. A whole host of issues come up, and we handle them from beginning to end, both in arbitration and in federal court.

Justin Alex: Thanks, Neil. So, over the rest of this podcast series, what we are aiming to do is provide a comprehensive but practical overview of how withdrawal liability comes up in all of the context that we've discussed and more. So that will include everything from the specifics on the dispute resolution process that we were talking about, what goes into the actual calculation of withdrawal liability, who is liable for it from a control group perspective, and also on other theories of liability, and questions and considerations around how withdrawal liability should be addressed in various types of transactions. We'll address all of that and more, and we're really looking forward to it. If you found this useful, be sure to follow us and subscribe on Apple Podcasts, Spotify, or YouTube, so you don't miss the next episode. If you liked what you heard or want to know more, drop us a line at wl@proskauer.com. That's wl@proskauer.com. I'm Justin Alex.

Neil Shah: And I'm Neil Shah. Today's discussion is for general information and is not legal advice. Thanks for listening to the Proskauer Benefits Brief.

Related Professionals

- **Justin S. Alex**
  Partner
- **Neil V. Shah**
  Senior Counsel