What is the Future of Workplace Legislation in the New 113th Congress? Part Two: Private Sector Multi-Employer Pension Plans

December 17, 2012

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Private Sector Multi-Employer Pension Plans

Recently, Credit Suisse released a study of private sector multi-employer pension plans, which revealed that the current unfunded liability of those plans is $369 billion in the transportation, construction, food marketing, and mining industries. Much of the underfunding comes from publicly-held Fortune 500 companies, but 88 percent of the remainder is in smaller, privately-held companies. A recent example is Hostess Brands, which reported to the bankruptcy court some $2 billion in underfunding from underfunded multi-employer plans. For many smaller businesses, withdrawal liability exceeds the company's entire net worth.

As the Wall Street Journal stated in an editorial earlier this year: "Imagine the panic if investors discovered that many of the biggest public companies had hidden liabilities so large as to make them worth a fraction of their value?"

However, what about the panic among small, privately-held and often family-owned businesses, where withdrawal liability will bankrupt employers, forcing employees to be laid off and communities to suffer the loss of tax revenues? Worse, if employers faced with withdrawal liability attempt to diversify and invest in other businesses, those investments become part of the "control group" subject to the company's overall liability. For example, back during consideration of the Pension Protection Act of 2006, one small, family-owned trucking company executive explained in Senate hearings that due to the withdrawal liability from his company's pension fund:

"Although we are busy and profitable, and I have met every pension plan contribution required of me on time and in full, my company's withdrawal liability exceeds its entire net worth. I cannot try to diversify by also investing in another business without those assets becoming subject to the overall withdrawal liability as well. . . . Thus, I cannot grow my business or even invest in another business."

Unfortunately, those amendments did not provide true relief from the problem, nor did they eliminate withdrawal liability.

Doing nothing is not an option. The problem is: what should Congress do to provide relief and protect pensions, yet avoid having the underfunding fall on the Pension Benefit Guaranty Corporation, which in effect, is on the backs of taxpayers?

A labor-management coalition is working on a plan.

However, will Congress be willing to address private-sector pension relief when state and local governments are grappling with unsustainable public sector pensions? Democratic as well as Republican governors and mayors now realize that taxpayers will not accept tax increases to meet public sector pension obligations, especially when taxpayers themselves are out of work and do not have a pension. The problem is depicted in a recent political cartoon:

A public sector worker complains that his pension is being taken away.

A private sector employee responds, “What’s a pension?”

The reality, however, is not a joke!

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