Butch Lewis Brings No Good News for Contributing Employers

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In the clamor that surrounded the current administration’s adoption of the American Rescue Act of 2021 (ARPA), quietly tucked in as Subtitle H is the Butch Lewis Emergency Pension Plan Relief Act of 2021 (Butch Lewis). Butch Lewis has been unsuccessfully bouncing around Congress since 2019. While Butch Lewis is long on rhetoric, at this juncture it is lacking in details or controls. Pension Benefit Guarantee Corporation (PBGC) regulations will be issued sometime in July. In the interim, it is important for employers to remain vigilant about actions by the PBGC.

As currently structured, Butch Lewis is a “logical” successor to Congress’ previously flawed efforts to “cure” the funding ills of the multi-employer benefit system. Those efforts began in 1980 with Congress’ passage of the Multi-employer Pension Plan Amendments Act of 1980 (MPPAA) and has continued through the passage of the Multiemployer Pension Reform Act of 2014 (MPRA).

**WHAT IS KNOWN AND WHAT UNIONS WANT**
Congress will provide approximately 86 billion dollars to “critical and declining” funds for financial assistance “...to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment...and ending...in 2051.” Payments will be made to more than ninety funds. There is no cap on this payment, no requirements for repayment, and funding predictions will be performed on a “deterministic basis.” The only obligation is that plans must reinstate suspended benefits and invest the Butch Lewis monies in investment-grade bonds or other investments allowed by the PBGC.

The Butch Lewis portion is otherwise a clean canvas to be augmented by PBGC regulations. Organized labor is using this clean canvas to “suggest” regulations that may harm employers.

**Lump Sum Payment**

The special financial assistance must be paid as a lump sum of all plan obligations until 2051, not at present value. Thus, $100 due in 2051 will be funded at $100, even though $100 paid in 2051 will be worth far less in 2021. Organized labor contends “all benefits due during the period” is defined as future benefit payment cash flows, not merely accrued benefits or unfunded liability. This concept will cost significantly more than 86 billion dollars. Organized labor also proposes funds should retain discretion as to when to pay from the lump sum payment and when to pay from the traditional asset account.

**Withdrawal Liability**

While Butch Lewis is silent on how special assistance will impact withdrawal liability, labor is urging for PBGC withdrawal liability rules which will work to the detriment of employers. Employers that withdraw before the last day of the plan year ending in 2051 would not have the special assistance considered as plan assets in calculating withdrawal liability. Moreover, labor is requesting that employers that withdraw before 2051 be subject to treatment under a mass withdrawal scenario. Thus, employers that normally would make interim payments over a period of twenty years would be required to make those interim payments into infinity!

In the absence of the regulations from the PBGC, the only clear point for an employer is despite Congress’ infusion of billions of dollars into more than ninety plans, it appears that withdrawal liability obligations will not be reduced.

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