View on our website.

GIBSON DUNN

ERISA Litigation Update June 12, 2026

Supreme Court Clarifies Timing Rules for Actuarial Assumptions in Multiemployer Pension Withdrawal Liability Calculations

This update summarizes the Court's reasoning, explains the decision's practical significance, and identifies key considerations for employers, fiduciaries, and other parties evaluating potential withdrawal liability exposure.

On May 21, 2026, the Supreme Court unanimously held that ERISA does not require multiemployer pension plans to calculate withdrawal liability using only actuarial assumptions adopted on or before the statutory measurement date. In *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, No. 23-1209, 608 U.S. ___ (2026), Justice Jackson, writing for the Court, affirmed the D.C. Circuit and rejected the argument that ERISA's "as of" measurement-date language for withdrawal liability determinations freezes the actuarial assumptions that must be used to determine an employer's withdrawal liability.

The decision is significant for employers participating in multiemployer pension plans, and for multiemployer plan trustees, fiduciaries, and actuaries. The Court held that ERISA §§ 4211 and 4213, codified at 29 U.S.C. §§ 1391 and 1393, do not impose a deadline by which actuarial assumptions must be selected. Instead, the statute requires that assumptions and methods must, in the aggregate, be reasonable, take into account plan experience and reasonable expectations, and reflect the actuary's best estimate of anticipated plan experience.[1]

At the same time, the Court did not give plans and actuaries carte blanche. Employers remain able to challenge withdrawal liability assessments in arbitration, including on the ground that the assumptions used were unreasonable. The Court also expressly left open whether assumptions adopted after the measurement date must be based only on information available as of that date.[2]

This alert summarizes the Court's reasoning, explains the decision's practical significance, and identifies key considerations for employers, fiduciaries, and other parties evaluating potential withdrawal liability exposure.

Background

ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980, requires an employer that withdraws from an underfunded multiemployer pension plan to pay "withdrawal liability."[3] Withdrawal liability represents the employer's share of the plan's unfunded vested benefits—that is, the difference between the present value of vested benefits owed to participants and beneficiaries and the value of plan assets.[4]

ERISA generally requires withdrawal liability to be calculated "as of" the last day of the plan year preceding the year of withdrawal—*i.e.*, the measurement date.[5] That calculation depends not only on hard data, such as the number of participants and the value of plan assets, but also on actuarial assumptions about future events, including mortality, retirement dates, investment returns, and discount rates.

The discount rate is particularly important. As the Court explained, the discount rate is the interest rate used to convert future benefit payments to present value. A higher discount rate generally reduces the present value of liabilities, which then reduces unfunded vested benefits and withdrawal liability; a lower discount rate generally has the opposite effect.[6]

Facts and Procedural History

Prior to January 2018, the IAM National Pension Fund used a 7.50% discount rate to value unfunded vested benefits. In January 2018, after the relevant December 31, 2017 measurement date, the Fund and its actuarial firm adopted a 6.50% discount rate for withdrawal liability calculations for employers withdrawing in 2018. The petitioning employers withdrew between April and December 2018. The Fund assessed their withdrawal liability using the 6.50% discount rate, which increased their potential liability compared to what it would have been with a 7.50% discount rate. For example, M&K Employee Solutions was assessed approximately $6.2 million using the 6.50% rate, whereas using the prior 7.50% rate would have resulted in an assessment of approximately $1.8 million.[7]

The employers initiated arbitration under 29 U.S.C. § 1401(a). The arbitrators ruled for the employers, concluding that the Fund could not apply assumptions adopted after the December 31, 2017 measurement date and instead had to use the assumptions "in effect" on that date. The Fund sought review in federal district court, where three of the cases were consolidated and the fourth proceeded separately. The district courts disagreed with the

employers' position, and the D.C. Circuit affirmed, holding that actuaries could select assumptions after the measurement date.[8]

The Supreme Court granted certiorari to resolve a split with the Second Circuit, which had held that interest-rate assumptions for withdrawal liability purposes must be adopted no later than the measurement date.[9]

The Supreme Court's Decision

The Supreme Court affirmed the D.C. Circuit, holding that ERISA "does not require pension plans to assess withdrawal liability based on actuarial assumptions adopted before the measurement date."[10]

The Court first rejected the employers' argument that 29 U.S.C. § 1391 freezes actuarial assumptions as of the measurement date. In the Court's view, § 1391's "as of" language fixes the historical data used in the withdrawal liability calculation—such as plan assets and participant information—but does not dictate when the actuary must select the assumptions used to perform that calculation. The Court reasoned that actuarial assumptions are not observable facts "in effect" on a particular date; they are predictive judgments and valuation tools used to calculate unfunded vested benefits.[11]

The Court then held that 29 U.S.C. § 1393, which governs actuarial assumptions used for this purpose, confirms that conclusion. Section 1393 requires assumptions and methods that, in the aggregate, are reasonable, account for plan experience and reasonable expectations, and reflect the actuary's "best estimate of anticipated experience under the plan."[12] But it contains no deadline for selecting assumptions, and, the Court explained, courts generally do not read limitations into statutes that Congress omitted.[13] The Court also contrasted § 1393 with 29 U.S.C. § 1399(c)(1)(A)(ii), where Congress expressly referred to assumptions used for the "most recent actuarial valuation," reinforcing that Congress knew how to impose timing limits when it wished to do so.[14]

The Court further reasoned that the employers' proposed rule could undermine § 1393's "best estimate" requirement by forcing actuaries to rely on assumptions selected before relevant plan or market information became available. In the Court's view, ERISA does not require actuaries to value unfunded vested benefits using measurement-date data while applying assumptions based on older facts.[15]

Finally, the Court rejected the employers' anti-retroactivity and policy arguments. 29 U.S.C. § 1394, which limits application of certain post-withdrawal plan rules or amendments, does not apply to actuarial assumptions. And while the employers warned of manipulation, the Court held that policy concerns cannot override statutory text. Employers remain able to challenge assumptions in arbitration, including on the ground that they are unreasonable.[16]

Key Takeaways for ERISA Plan Sponsors, Contributing Employers, and Fiduciaries

1. **Multiemployer plans and actuaries have greater timing flexibility.** The *M & K* decision confirms that ERISA does not require actuarial assumptions for withdrawal

liability calculations to be adopted on or before the measurement date. Plans may adopt assumptions later, provided they separately satisfy § 1393's reasonableness and best-estimate requirements.

2. **Timing-based challenges will be harder; substantive actuarial challenges will become more important.** After *M & K*, an employer generally will not prevail merely by showing that an assumption was adopted after the measurement date. Future disputes are more likely to focus on whether the assumptions, in the aggregate, were reasonable, accounted for plan experience and reasonable expectations, and reflected the actuary's "best estimate of anticipated experience under the plan."[17]

3. **Withdrawal liability forecasting may become less predictable.** Employers evaluating potential withdrawal from underfunded multiemployer plans should be cautious about relying on assumptions disclosed in prior annual valuations, Form 5500 filings, or earlier plan-provided withdrawal liability estimates as a proxy for ultimate withdrawal liability assessments. The *M & K* decision confirms that plans are not necessarily limited to assumptions adopted before plan year-end, which may affect forecasting, transaction diligence, restructuring analysis, and labor negotiations.

4. **Discount-rate changes remain a critical exposure driver.** The facts of *M & K* illustrate the magnitude of the issue: a one-percentage-point reduction in the discount rate materially increased the Fund's unfunded vested benefits and the employers' assessed withdrawal liability. Employers with unionized operations should evaluate potential exposure under alternative assumption sets, particularly when considering withdrawals, facility closures, asset sales, restructurings, or changes in bargaining strategy.

5. **Arbitration remains essential.** The Court emphasized that ERISA allows employers to challenge unreasonable assumptions in arbitration. Employers receiving withdrawal liability assessments should preserve their arbitration rights, retain actuarial expertise promptly, and develop a record focused on the statutory standards in 29 U.S.C. §§ 1393 and 1401.

6. **One important question remains open.** The Court expressly did not decide whether actuarial assumptions adopted after the measurement date must be based only on information available as of the measurement date.[18] That issue may become significant in future disputes, particularly during periods of market volatility or rapidly changing economic conditions.

Conclusion

M & K is an important decision for multiemployer pension plans, contributing employers, fiduciaries, and businesses evaluating potential withdrawal liability exposure. The Court clarified that ERISA does not impose a measurement-date deadline for adopting actuarial assumptions used to calculate withdrawal liability, reducing the force of timing-based challenges to withdrawal-liability assessments.

At the same time, the decision preserves important safeguards. Assumptions must still satisfy § 1393's reasonableness and best-estimate requirements, and employers may continue to challenge unreasonable assumptions in arbitration. In light of the decision, employers with multiemployer pension plan exposure should carefully evaluate withdrawal liability forecasts, reserve assumptions, transaction diligence, and labor or restructuring strategies.

Gibson Dunn lawyers are available to assist clients in evaluating the implications of this decision, assessing withdrawal-liability exposure, challenging or defending actuarial assumptions, and addressing multiemployer pension issues in litigation, transactions, and restructurings.

[1] 29 U.S.C. § 1393(a)(1).

[2] *M & K*, slip op. at 6 n.2.

[3] 29 U.S.C. § 1381(a).

[4] *See* 29 U.S.C. §§ 1381(b), 1393(c).

[5] 29 U.S.C. § 1391.

[6] *M & K*, slip op. at 3.

[7] *M & K*, slip op. at 4–5.

[8] *Trustees of the IAM Nat'l Pension Fund v. M & K Employee Solutions, LLC*, 92 F.4th 316, 322–23 (D.C. Cir. 2024).

[9] *See Nat'l Ret. Fund v. Metz Culinary Mgmt., Inc.*, 946 F.3d 146, 152 (2d Cir. 2020).

[10] *M & K*, slip op. at 12.

[11] M & K, slip op. at 6–8.

[12] 29 U.S.C. § 1393(a)(1).

[13] *M & K*, slip op. at 9 (citing Romag *Fasteners, Inc. v. Fossil Group, Inc.*, 590 U.S. 212, 215 (2020)).

[14] *Id.* (citing *Russello v. United States*, 464 U.S. 16, 23 (1983)).

[15] *M & K*, slip op. at 9–10.

[16] *M & K*, slip op. at 10–11; 29 U.S.C. § 1401(a)(3)(B)(i).

[17] 29 U.S.C. § 1393(a)(1).

[18] *M & K*, slip op. at 6 n.2.

The following Gibson Dunn lawyers prepared this update: Jennafer Tryck, Michael Collins, and Ashley Johnson.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's ERISA Litigation, Labor & Employment, or Executive Compensation & Employee Benefits practice groups:

ERISA Litigation:
Karl G. Nelson – Dallas (+1 214.698.3203, knelson@gibsondunn.com)
Ashley E. Johnson – Dallas (+1 214.698.3111, ajohnson@gibsondunn.com)
Jennafer M. Tryck – Orange County (+1 949.451.4089, jtryck@gibsondunn.com)

Labor & Employment:
Jason C. Schwartz – Washington, D.C. (+1 202.955.8242, jschwartz@gibsondunn.com)
Katherine V.A. Smith – Los Angeles (+1 213.229.7107, ksmith@gibsondunn.com)

Executive Compensation & Employee Benefits:
Michael J. Collins – Washington, D.C. (+1 202.887.3551, mcollins@gibsondunn.com)
Sean C. Feller – Los Angeles (+1 310.551.8746, sfeller@gibsondunn.com)
Krista Hanvey – Dallas (+1 214.698.3425, khanvey@gibsondunn.com)