

poena, or other legal process of a court upon a trustee or an administrator of a single-employer plan in such trustee's or administrator's capacity as such shall constitute service upon the plan. If a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon any contributing sponsor of the plan shall constitute such service. Any money judgment under this section against a single-employer plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in such person's individual capacity.

(c) Jurisdiction and venue

The district courts of the United States shall have exclusive jurisdiction of civil actions under this section. Such actions may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(d) Right of corporation to intervene

A copy of the complaint or notice of appeal in any action under this section shall be served upon the corporation by certified mail. The corporation shall have the right in its discretion to intervene in any action.

(e) Awards of costs and expenses

(1) General rule

In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to any party who prevails or substantially prevails in such action.

(2) Exemption for plans

Notwithstanding the preceding provisions of this subsection, no plan shall be required in any action to pay any costs and expenses (including attorney's fees).

(f) Limitation on actions

(1) In general

Except as provided in paragraph (3), an action under this section may not be brought after the later of—

(A) 6 years after the date on which the cause of action arose, or

(B) 3 years after the applicable date specified in paragraph (2).

(2) Applicable date

(A) General rule

Except as provided in subparagraph (B), the applicable date specified in this paragraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(B) Special rule for plaintiffs who are fiduciaries

In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this paragraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date described in subparagraph (A).

(3) Cases of fraud or concealment

In the case of fraud or concealment, the period described in paragraph (1)(B) shall be extended to 6 years after the applicable date specified in paragraph (2).

(Pub. L. 93-406, title IV, § 4070, as added Pub. L. 99-272, title XI, § 11014(a), Apr. 7, 1986, 100 Stat. 261; amended Pub. L. 101-239, title VII, § 7881(f)(8), Dec. 19, 1989, 103 Stat. 2440.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239 struck out “1349,” after “section 1341, 1342,”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as an Effective Date of 1986 Amendment note under section 1341 of this title.

§ 1371. Penalty for failure to timely provide required information

The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle, subtitle A, B, or C of this subchapter, as¹ section 1083(k)(4) or 1085b(e) of this title, or any regulations prescribed under any such subtitle or such section, within the applicable time limit specified therein. Such penalty shall not exceed \$1,000 for each day for which such failure continues.

(Pub. L. 93-406, title IV, § 4071, as added Pub. L. 100-203, title IX, § 9314(c)(1), Dec. 22, 1987, 101 Stat. 1330-367; amended Pub. L. 101-239, title VII, § 7881(g)(8), (i)(3)(B), Dec. 19, 1989, 103 Stat. 2442; Pub. L. 109-280, title I, § 107(b)(5), Aug. 17, 2006, 120 Stat. 820.)

AMENDMENTS

2006—Pub. L. 109-280 substituted “1083(k)(4)” for “1082(f)(4)”.

1989—Pub. L. 101-239, § 7881(i)(3)(B), substituted “, subtitle A, B, or C of this subchapter, as section 1082(f)(4) or 1085b(e) of this title” for “or subtitle A, B, or C” and inserted “or such section” after “such subtitle”.

Pub. L. 101-239, § 7881(g)(8), made clarifying amendment to directory language of Pub. L. 100-203, § 9314(c)(1), resulting in no change in text.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to plan years beginning after 2007, see section 107(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.

¹ So in original. Probably should be “or”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§ 101-107) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

SUBTITLE E—SPECIAL PROVISIONS FOR
MULTIEMPLOYER PLANS
AMENDMENTS

1980—Pub. L. 96-364, title I, § 104, Sept. 26, 1980, 94 Stat. 1217, added subtitle heading. Former subtitle E heading “Effective Date; Special Rules” was struck out. See subtitle F of this subchapter.

PART 1—EMPLOYER WITHDRAWALS

§ 1381. Withdrawal liability established; criteria and definitions

(a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

(b) For purposes of subsection (a) of this section—

(1) The withdrawal liability of an employer to a plan is the amount determined under section 1391 of this title to be the allocable amount of unfunded vested benefits, adjusted—

(A) first, by any de minimis reduction applicable under section 1389 of this title,

(B) next, in the case of a partial withdrawal, in accordance with section 1386 of this title,

(C) then, to the extent necessary to reflect the limitation on annual payments under section 1399(c)(1)(B) of this title, and

(D) finally, in accordance with section 1405 of this title.

(2) The term “complete withdrawal” means a complete withdrawal described in section 1383 of this title.

(3) The term “partial withdrawal” means a partial withdrawal described in section 1385 of this title.

(Pub. L. 93-406, title IV, § 4201, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1217.)

PRIOR PROVISIONS

A prior section 1381, Pub. L. 93-406, title IV, § 4402, formerly § 4082, Sept. 2, 1974, 88 Stat. 1034; S.Res. 4, Feb. 4, 1977; Pub. L. 95-214, § 1, Dec. 19, 1977, 91 Stat. 1501; S.Res. 30, Mar. 7, 1979; Pub. L. 96-24, June 19, 1979, 93 Stat. 70; Pub. L. 96-239, § 1, Apr. 30, 1980, 94 Stat. 341; Pub. L. 96-293, § 1, June 30, 1980, 94 Stat. 610, renumbered § 4402 and amended Pub. L. 96-364, title I, § 108(a)-(c)(1), Sept. 26, 1980, 94 Stat. 1267, relating to the effective dates and special rules for this subchapter, was transferred to section 1461 of this title.

EFFECTIVE DATE

Part effective Sept. 26, 1980, see section 1461(e)(2) of this title.

ELIMINATION OF RETROACTIVE APPLICATION OF AMENDMENTS MADE BY MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980, PUB. L. 96-364

Pub. L. 98-369, div. A, title V, § 558(a), (c), (d), July 18, 1984, 98 Stat. 899, provided that:

“(a) IN GENERAL.—

“(1) LIABILITY.—Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

“(2) REFUNDS.—Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer with interest (in accordance with section 401(a)(2) [26 U.S.C. 401(a)(2)]), less a reasonable amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

“(c) NO INCREASE IN LIABILITY.—The amendments made by this section [amending sections 1391, 1397, 1399, 1415 and 1461 of this title and provisions set out as a note under section 1385 of this title] shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), as in effect immediately before the amendments made by subsection (b) [amending sections 1391, 1397, 1399, 1415, and 1461 of this title and provisions set out as a note under section 1385 of this title], as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

“(d) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS.—In the case of an employer who, on September 26, 1980, has a binding agreement to withdraw from a multiemployer plan, subsection (a)(1) shall be applied by substituting ‘December 31, 1980’ for ‘September 26, 1980.’”

APPLICABILITY TO CERTAIN EMPLOYERS WITHDRAWN BEFORE SEPT. 26, 1980, FROM MULTIEMPLOYER PLAN COVERING EMPLOYEES IN SEAGOING INDUSTRY; EFFECTIVE DATE, COVERAGE, ETC.

Section 108(c)(4) of Pub. L. 96-364 provided that: “In the case of an employer who withdrew before the date of enactment of this Act [Sept. 26, 1980] from a multiemployer plan covering employees in the seagoing industry (as determined by the corporation), sections 4201 through 4219 of the Employee Retirement Income Security Act of 1974, as added by this Act, [section 1381 through 1399 of this title], are effective as of May 3, 1979. For the purpose of applying section 4217 [section 1397 of this title] for purposes of the preceding sentence, the date ‘May 2, 1979,’ shall be substituted for ‘April 28, 1980,’ and the date ‘May 3, 1979’ shall be substituted for ‘April 29, 1980.’ For purposes of this paragraph, terms which are used in title IV of the Employee Retirement Income Security Act of 1974 [this subchapter], or in regulations prescribed under that title, and which are used in the preceding sentence have the same meaning as when used in that Act [see Short Title note set out under sections 1001 of this title] or those regulations. For purposes of this paragraph, the term ‘employer’ includes only a substantial employer covering employees in the seagoing industry (as so determined) in connection with ports on the West Coast of the United States, but does not include an employer who withdrew from a plan because of a change in the collective bargaining representative.”