

(d) Building and construction industry; entertainment industry

(1) An employer to whom section 1383(b)² of this title (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.

(2) An employer to whom section 1383(c)² of this title (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the corporation by regulation.

(e) Reduction or elimination of partial withdrawal liability under any conditions; criteria; procedures applicable

(1) The corporation may prescribe regulations providing for the reduction or elimination of partial withdrawal liability under any conditions with respect to which the corporation determines that reduction or elimination of partial withdrawal liability is consistent with the purposes of this chapter.

(2) Under such regulations, reduction of withdrawal liability shall be provided only with respect to subsequent changes in the employer's contributions for the same operations, or under the same collective bargaining agreement, that gave rise to the partial withdrawal, and changes in the employer's contribution base units with respect to other facilities or other collective bargaining agreements shall not be taken into account.

(3) The corporation shall prescribe by regulation a procedure by which a plan may by amendment adopt rules for the reduction or elimination of partial withdrawal liability under any other conditions, subject to the approval of the corporation based on its determination that adoption of such rules by the plan is consistent with the purposes of this chapter.

(Pub. L. 93-406, title IV, § 4208, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1224.)

REFERENCES IN TEXT

"Section 1383(b) of this title" and "section 1383(c) of this title", referred to in subsec. (d), were in the original "section 4202(b)" and "section 4202(c)", respectively, meaning section 4202(b) and section 4202(c) of the Employee Retirement Income Security Act of 1974 and were editorially translated as the probable intent of Congress in view of section 4202 of the Employee Retirement Income Security Act of 1974, which is classified to section 1382 of this title, not having subsection designations and the subject matter of section 4203 of the Act which is classified to section 1383 of this title.

This chapter, referred to in subsec. (e)(1), (3), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

² See References in Text note below.

§ 1389. De minimis rule**(a) Reduction of unfunded vested benefits allocable to employer withdrawn from plan**

Except in the case of a plan amended under subsection (b) of this section, the amount of the unfunded vested benefits allocable under section 1391 of this title to an employer who withdraws from a plan shall be reduced by the smaller of—

- (1) $\frac{3}{4}$ of 1 percent of the plan's unfunded vested obligations (determined as of the end of the plan year ending before the date of withdrawal), or
- (2) \$50,000,

reduced by the amount, if any, by which the unfunded vested benefits allowable to the employer, determined without regard to this subsection, exceeds \$100,000.

(b) Amendment of plan for reduction of amount of unfunded vested benefits allocable to employer withdrawn from plan

A plan may be amended to provide for the reduction of the amount determined under section 1391 of this title by not more than the greater of—

- (1) the amount determined under subsection (a) of this section, or
- (2) the lesser of—
 - (A) the amount determined under subsection (a)(1) of this section, or
 - (B) \$100,000,

reduced by the amount, if any, by which the amount determined under section 1391 of this title for the employer, determined without regard to this subsection, exceeds \$150,000.

(c) Nonapplicability

This section does not apply—

- (1) to an employer who withdraws in a plan year in which substantially all employers withdraw from the plan, or
- (2) in any case in which substantially all employers withdraw from the plan during a period of one or more plan years pursuant to an agreement or arrangement to withdraw, to an employer who withdraws pursuant to such agreement or arrangement.

(d) Presumption of employer withdrawal from plan pursuant to agreement or arrangement applicable in action or proceeding to determine or collect withdrawal liability

In any action or proceeding to determine or collect withdrawal liability, if substantially all employers have withdrawn from a plan within a period of 3 plan years, an employer who has withdrawn from such plan during such period shall be presumed to have withdrawn from the plan pursuant to an agreement or arrangement, unless the employer proves otherwise by a preponderance of the evidence.

(Pub. L. 93-406, title IV, § 4209, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1225.)

§ 1390. Nonapplicability of withdrawal liability for certain temporary contribution obligation periods; exception

(a) An employer who withdraws from a plan in complete or partial withdrawal is not liable to the plan if the employer—