Pandemic Puts More Stress On Struggling Pension System

By Danielle Nichole Smith
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Law360 (June 5, 2020, 9:32 PM EDT) -- The coronavirus outbreak has presented daunting challenges for an already-struggling multiemployer pension plan system. It's also amplifying calls for Congress to step up and pass legislation to protect against millions of retirees losing their financial livelihood.

More than a hundred multiemployer pension plans covering over a million workers and retirees were on the ropes even before COVID-19 became a household term, and that number could more than double depending on how the pandemic plays out, according to a letter sent to Congress in April by consulting company the Segal Group.

"If there's a concern, it's the unknown versus the known," said David Brenner, Segal's director of multiemployer consulting. "If there's an impact on the multiemployer plans, it's the insertion of a degree of uncertainties to which we've never experienced before."

A big part of that uncertainty stems from the volatility in the stock market caused by the pandemic, and the concerns that plans' returns on their investments may suffer as a result. Though the market seems to have bounced back somewhat from its steep drop earlier in the year, it remains to be seen how it will weather the crisis in the long run.

Investment returns are important for multiemployer pension plans because they can impact a plan's funding status, a designation that indicates the plan's long-term health. And if a plan's financial well-being appears to be faltering, the employers paying into it will start thinking about abandoning ship, said Grace H. Ristuccia of Ogletree Deakins Nash Smoak & Stewart PC.

"In general, if a plan is headed towards insolvency, employers have a strong incentive to jump off the ship before it crashes and burns, before it totally sinks," Ristuccia said.

Ivelisse Berio LeBeau, a partner at the Wagner Law Group, said it's hard to know yet whether plans will make their expected returns for 2020, noting "who knows what's going to happen in the fall."

"But obviously everybody is paying attention to that; you can't not," Berio LeBeau said.

Another issue multiemployer plans are facing is the reduction in hours for some workers during the pandemic, since employer contributions for multiemployer plans are affected by those hours.

"I do think the coronavirus in this period of time has exacerbated what many of the plans came out of in the 2008/2009 time period, and some had really built up and improved and done well," said Ruth S. Marcott of Kutak Rock LLP. "And now they're just struggling to not slip back."

These challenges come against the backdrop of a safety net that's expected to run out of money itself. The Pension Benefit Guaranty Corp. projects that its multiemployer pension insurance program — covering plans negotiated by two or more employers and a union — will reach insolvency in 2025. That means that plans that go belly up might not be able to rely on PGBC in the relatively near future.

"As you get closer and closer, it's like trying to turn the Titanic. It's just hard to turn it at the last minute," Ristuccia said, referring to the 2025 date. "It's already going in a certain direction. There are a lot of reasons why it's going that way. It's hard to just change it suddenly and change its course."

In 2014, Congress passed the Multiemployer Pension Reform Act, which allows plans in critical and declining status to ask the U.S. Department of the Treasury for permission to cut retirees' benefits in order to try to keep the plan alive.

But Karen Friedman, the Pension Rights Center executive vice president and policy director, said the MPRA is a "horrible interim solution" for plans that the worker advocacy group would like to see eliminated and replaced with other legislation, such as the Emergency Pension Plan Relief Act that recently passed in the House.

As many call for the federal government to enact legislation addressing the economic impact of the pandemic, pension reform advocates are seeing a window of opportunity to convince lawmakers to give retirees more stability.
The Emergency Pension Plan Relief Act — which was included in the Heroes Act coronavirus relief bill that passed the House in May before stalling in the Senate — would allow struggling multiemployer pension plans to more easily transfer certain liabilities to the PBGC.

The bill would also, among other things, provide federal funding for the PBGC, prevent plans receiving help from the agency from cutting benefits, and increase the multiemployer insurance program's benefit guarantees.

Currently, the maximum guarantee for a person with 40 years of service is $17,160 per year.

The Heroes Act also includes a more controversial component known as the Grow Act, which has drawn criticism from the Pension Rights Center and others. The Grow Act would allow for multiemployer plans known as "composite plans" that aren't subject to the PBGC's premium requirements or guarantees.

According to Brenner, the Grow Act wouldn't fix unhealthy plans. It is simply "putting an arrow in the quiver of boards of trustees who might want to change their risk profiles going forward," he said.

The Heroes Act, also known as the Health and Economic Recovery Omnibus Emergency Solutions Act, certainly isn't the first attempt to shore up the struggling multiemployer pension system. The Butch Lewis Act, which would have provided federal loans to plans in trouble, passed the House in 2019. Separately, U.S. Sens. Chuck Grassley, R-Iowa, and Lamar Alexander, R-Tenn., announced a proposal in November that would expand the PBGC's authority and require retirees to turn over a portion of their benefits to the agency in the form of co-payments, among other things.

"We've seen polar opposite proposals from Grassley/Alexander and then within the Heroes Act," said Christian Benjaminsen of actuarial consulting firm Cheiron. "Hopefully, what we'll see down the road is Congress working together to develop a solution to not have participants lose significant benefits but also not overburdening other multiemployer plans."

Brenner said he really believes a solution can be found for the multiemployer pension crisis — if people go beyond the politics and rhetoric and roll up their sleeves.

"This is a solvable problem," Brenner said. "And it's one that affects millions of peoples' lives, so it can't be ignored and shouldn't be ignored."

--Additional reporting by Emily Brill. Editing by Aaron Pelc.

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