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PBGC announces “4062(e)” moratorium through December 31, 2014

To address ongoing uncertainty about whether and how PBGC enforces the ERISA protections triggered when a plan sponsor encounters a cessation of operations affecting more than 20% of plan participants, PBGC will hold off enforcement efforts on open and new cases. However, PBGC still wants companies to report new events during the moratorium period.

Background

Section 4062(e) of ERISA is one of PBGC’s tools for ensuring that plan sponsors are held financially responsible for benefit promises and do not escape liability when business operations change. Under ERISA section 4062(e), plan sponsors have reporting obligations and may have financial obligations when operations are stopped at a facility and more than 20% of the employees participating in an employer-sponsored pension plan are terminated as a result. In these situations, the employer is treated as a substantial employer withdrawing from a multiple employer plan.

In 2010, PBGC proposed regulations for these requirements that were not well received by plan sponsors or industry organizations. In response, PBGC announced a modified enforcement policy. Details on the modified enforcement policy and ongoing questions are available in our November 6, 2012 *For Your Information*.

Moratorium announced

The announcement of the new moratorium reports that plan sponsors still object to the continued regulatory uncertainty associated with PBGC’s modified enforcement policy, even though far fewer plans were targeted for enforcement under section 4062(e) in the fiscal year that ended September 30, 2013. In response, the moratorium will allow PBGC to consider further targeting and ways to minimize effects on necessary business activities.

The moratorium is effective immediately and set to expire at the end of 2014. Meantime, companies should continue to report new 4062(e) events.

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