



Pension Fund Liability: Your Corporate Structure May Not Protect You

Employment, Labor & Benefits Practice Group

Foster Swift Employment, Labor & Benefits Quarterly

October 2009

Business owners often protect themselves from personal liability by forming some type of protective legal entity, such as a corporation. These legal entities offer business owners a great deal of protection from personal liability when correctly organized and operated. There are some exceptions, however, and one of them is often not discussed until it is too late.

Under the Employee Retirement Income Security Act ("ERISA"), an employer who adopts or agrees to participate in a qualified pension plan is required to make ongoing pension contributions to the pension fund. Pursuant to ERISA, an employer is a fiduciary to a pension plan insofar as that employer exercises control over pension plan assets. Moreover, those employers who breach their duty to fund a pension plan (for example, they fail to make required pension contributions) may be personally liable for the shortfall. Under most scenarios involving personal liability for corporations, a plaintiff is required to "pierce the corporate veil" before personal liability will attach to any corporate owners. Pension fund delinquencies, however, are a different story.

Recently, the United States District Court for the Eastern District of Michigan found a sole corporate shareholder personally liable for pension fund delinquencies. The Court held that the employer violated ERISA (and this personal liability attached to him) from the moment the employer knowingly failed to make required contributions to the pension fund.

It is important to recognize the limitations of corporations and other legal entities when evaluating ERISA liability. Often, business owners incorrectly assume that they are protected from liability by their corporate shield. Under ERISA and the relevant case law interpreting ERISA, personal liability may attach at the time the employer knowingly fails to make a required contribution to the pension plan.

PRACTICE AREAS

Business Law

Employee Benefits

ERISA

Family Owned Businesses