

INDIVIDUAL HELD LIABLE FOR EMPLOYER'S DELINQUENT CONTRIBUTIONS TO MULTIEMPLOYER PLAN

Hodgson Russ Newsletter
July 31, 2017

Practices & Industries

Employee Benefits

Courts have ruled that unpaid employer contributions to a multiemployer plan generally are not plan assets unless the parties specify otherwise in the plan document, trust agreement or policies. There are important implications where a plan chooses to treat unpaid contributions as plan assets. In a recent New York case, an individual officer of a company was held personally liable for multiemployer contributions owed to a fund by his company on the grounds that, under the governing plan documents, the unpaid contribution were ERISA plan assets. Individuals who exercise control over plan assets are ERISA fiduciaries and can be held personally liable for failing to deal with those assets in accordance with ERISA (in this case, to promptly deposit the funds with the multiemployer plan). Employers who have discretion with respect to the payment of corporate expenses should carefully review fund documents to determine whether they are acting in a fiduciary capacity with respect to the obligation to make fund contributions (i.e., whether those contributions are plan assets) so that they can act accordingly to comply with ERISA fiduciary standards and avoid personal liability. *Electrical Workers IBEW Local 1249 Pension & Ins. Funds v. South Buffalo Elec., Inc.* (N.D.N.Y. 2017)