

Multiple Employer Plans (MEPs): Important Considerations

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Recent media coverage has highlighted the increased focus on multiple employer plans (MEPs) among smaller employers, particularly private colleges and universities in states like Virginia and Wisconsin. These articles note that implementation is on the rise, and that many smaller organizations not currently participating in an MEP are considering doing so.

Much of this MEP activity appears to stem from the endless reports of class action lawsuits aimed at higher education, with smaller organizations yearning for stronger fiduciary governance and protection, as well as greater overall cost savings, administrative feasibility, and choice among investment options. Since these lawsuits are primarily focused on fees and fund offerings, the attraction to an MEP is attributed to economies of scale: by joining forces, smaller organizations look to garner interest from larger providers in terms of pricing, fund offerings and services. As a result, some view MEPs as an all-in-one solution. However, is bigger always better?

WHAT IS A MULTIPLE EMPLOYER PLAN (MEP)?

An MEP allows multiple unrelated employers to participate in a common retirement plan, sharing a core plan administrator or lead employer. MEPs are particularly attractive to smaller employers that want to provide a retirement savings plan as a benefit to their employees but lack the financial and administrative capacity to do so. In fact,

smaller employers typically point to start-up costs and ongoing fees from retirement plan providers and recordkeepers as one of the main reasons for not offering a stand-alone retirement savings plan as part of their overall benefits package. This can leave smaller employers at a disadvantage in attracting and ultimately hiring the most talented job candidates, especially those candidates coming from employers that may have sponsored a robust retirement savings plan.

Aside from being cost prohibitive, administration of a retirement savings plan may not fit within the framework of a smaller employer's organizational structure. For instance, small employers may lack the human resources staff to administer the plan, leaving the administration to other senior leaders, who are likely already stretched thin!

While there are clearly some advantages to joining an MEP, there are some potential disadvantages as well. A single Form 5500 filing and plan audit are performed at the MEP-level; however, employers that are part of an MEP are not completely absolved from some level of fiduciary liability. Depending upon the type of MEP, the employers may be recognized as a co-sponsor or strictly a participating employer. Regardless, they are still liable for the selection of the MEP itself and monitoring the activity of the lead employer.

MULTIPLE EMPLOYER PLANS VERSUS MULTIEMPLOYER PLANS

While they may sound similar, MEPs should not be confused with multiemployer plans (sometimes called Taft-Hartley plans), which refer to collectively-bargained or union plans managed by more than one employer (typically within the same industry), as well as a labor union. A major differentiator of multiemployer plans is that participants have the freedom to change jobs among the participating employers within the multiemployer plan arrangement while enjoying continuous coverage, regardless of the participating employer for which they work. On the other hand, participants in an MEP who change jobs among the MEP's participating employers or adopting employers are NOT automatically covered by the same plan provisions. Rather, they must meet their new adopting employer's eligibility requirements and ultimately enroll in that employer's plan. For crediting eligibility and vesting services, adopting employers are treated as a single employer.

The Department of Labor (DOL) currently requires that adopting employers of an MEP be in the same line of business or industry. However, there is pending legislation in Congress that would remove this "commonality requirement."

MEP DATA AGGREGATION

In a stand-alone retirement plan, there is typically one payroll feed to the plan provider or recordkeeper. If there is more than one payroll feed, it is likely that the same payroll provider is used; helping to keep the overall transmittal process relatively uncomplicated. However, when multiple adopting employers use different payroll providers and varying methods of transmitting payroll data, there may be the need for an outside party, such as a data aggregator, to convert the required payroll data feeds of the adopting employers into

one common format acceptable to the MEP's recordkeeper. Depending on the level of complexity, this extra step may involve unexpected time and resources from the adopting employers and can add to the pricing of the MEP.

PLAN PROVISIONS AND MEPS

The lead employer in an MEP has the leverage with the recordkeeper to decide the scope of the provisions available. Adopting employers may have some flexibility with certain provisions for their plans, such as eligibility requirements, employer contributions, vesting, and the availability of loans. However, there are some recordkeepers that may not allow this flexibility on their MEP platform and may therefore require adopting employers to carry the same provisions as the lead employer.

THE MEP INVESTMENT MENU

Within the parameters of an MEP, there is one menu of investment options shared among all the adopting employers. From a convenience perspective, this alleviates adopting employers from having to select, de-select and monitor investment options, as this is handled by the lead employer or an investment committee at the lead employer-level. However, this convenience also eliminates the ability of adopting employers to select investment options that may better reflect the culture of their individual organizations, as they must use the pre-determined menu of funds.

TERMINATING MEP PARTICIPATION

Stand-alone retirement savings plans are terminated for a variety of reasons; and there is a specific process that plan sponsors must follow to terminate while remaining compliant with the DOL. A successful termination of any retirement plan should lead to an uncomplicated distribution of participant assets.

However, terminating as an adopting employer within an MEP may not be so clear. Depending on how it is outlined in the master plan document, adopting employers may not have the ability to terminate “their plan” and distribute participant assets. Rather, termination may require the lead employer to spin off the terminating adopting employer’s plan to a new stand-alone plan. While this may have the appearance of a distributable event, technically, it is not. Thus, the spin-off alone does not allow affected participants to take their assets in cash or as rollover distributions. There must instead be a plan-to-plan transfer of assets to the new stand-alone plan.

Further, the exit of an adopting employer can have far-reaching impact on the overall stability of the MEP. Not all adopting employers carry the same weight within an MEP; some may be larger than others in terms of participant accounts and plan assets. If a larger adopting employer decides to terminate, and thus removes a major portion of the MEP’s assets, it could create major problems with the MEP’s pricing at the recordkeeper level. Anticipated revenues may decline or never come to fruition, making the MEP less attractive to the recordkeeper or potentially creating a loss, placing the status of the MEP in jeopardy for the lead employer as well as the adopting employers.

CONCLUSION

While there are attractive features of MEPs, such as avoiding high start-up costs and minimizing the burden of plan administration, there are also some concerns of which employers should be mindful. Employers should carefully consider their decision to join an MEP.

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