Benefits Report: June 2026

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Trump Accounts Are Imminent: Employee Benefit Considerations

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Trump Accounts, a new tax-advantaged individual retirement account (IRA) intended for the benefit of minor children, were established under Internal Revenue Code (Code) Section 530A as part of the One Big Beautiful Bill (OB3) Act of 2025. These new accounts may be established for the benefit of children under age 18 with a valid social security number, and contributions can begin as early as July 4, 2026. Accounts can be opened by an authorized individual (generally a parent or legal guardian) by filing IRS Form 4547. Electronic completion of the Form 4547 will also be available through a new “trumpaccounts.gov” portal.

The intent behind Trump accounts is to provide an early-start long-term savings vehicle for children, and to provide parents, guardians and employers a tax-advantaged vehicle for investment in the child’s future. Trump Accounts are intended to supplement existing savings vehicles such as Section 529 accounts. As part of a pilot contribution program, The United States Treasury will make a one-time $1,000 contribution for eligible children with an established Trump Account born between 2025 and 2028. Prior to January 1 of the year the child turns 18 (known as the “growth period”), investments are restricted to U.S. stock index funds, and distributions are generally prohibited.

Notably, parent/guardian contributions made to Trump Accounts during the growth period are generally not tax deductible, but they do grow tax-deferred (similar to a Roth structure). Contributions from all sources are subject to a current aggregate annual limit of $5,000 per account. However, a significant exception is that pre-tax contributions advantages may be available through an employer sponsored program, as described below.

Benefits of Employer Involvement

Under new Code Section 128, introduced by OB3, an employer may sponsor a Trump Account Contribution Program (TACP) to provide contributions to the Trump Accounts of employees and their dependents. Employer contributions are capped at $2,500 per employee per year (subject to cost-of-living adjustments after 2027). Importantly, Code Section 128 employer contributions are excluded from the employee's W-2 gross income, but they do count toward the $5,000 aggregate annual cap. Furthermore, the $2,500 limit applies per employee, not per child. For example, if an employee has two or more children that have Trump Accounts, an employer with a TACP may only contribute up to $2,500 in the aggregate for 2026 to those Trump Accounts.

Employees also may be offered the opportunity to make pre-tax Trump Account contributions through the employer's Code Section 125 cafeteria plan, provided that the contributions are only made to the Trump Accounts of dependents and not the Trump Accounts of employees. Note: We are waiting for further guidance from the IRS regarding the coordination between TACPs and Section 125 cafeteria plans.

On June 18, 2026, the Department of Labor (DOL) issued a long-awaited Technical Release 2026-02, clarifying that Trump Accounts with Code Section 128 employer contribution programs generally will not constitute "employee pension benefit plans" under Title I of ERISA. This is significant because the DOL concluded Trump Accounts actually fall outside of ERISA's pension plan definition and statutory scheme—even when funded by employer contributions. The DOL reached this conclusion by reasoning that, under ERISA, a "pension plan" must be designed to provide retirement income or result in a deferral of income to an *employee*. Because Trump Accounts are established for employees' minor *child* or *dependents*—not for the employees themselves—the benefit belongs to the child, not the employee. As such, even employer contributions to Trump Accounts under Code Section 128, if made properly, do not transform the accounts into employer-sponsored pension plans subject to ERISA.

Technical Release 2026-02 also addresses the less common situation of where the employee themselves is a minor and the beneficiary of the TACP benefit. In other words, what if the employer's TACP provides benefits to a 16 or 17 year old *employee*? The DOL concluded that such accounts will generally not create an ERISA plan if participation is voluntary and the employer does not (i) control the investments, (ii) restrict account use beyond Code requirements, (iii) represent the arrangement as an ERISA plan, or (iv) receive compensation for providing the TACP.

Employer Actions

Employers have significant flexibility to design their Code Section 128 programs. Nevertheless, employers should undertake the following considerations and practices in designing a TACP:

- **Develop a contribution structure.** Employers must decide whether to make contributions from company assets, offer pre-tax salary reduction contributions through a Section 125 cafeteria plan, or potentially both. Based on current guidance, it appears that Employers have the flexibility to make employer contributions contingent on Section 125 contributions (similar to a matching contribution in a 401(k) plan), and they may also choose to implement eligibility requirements (such as a service requirement). All such contributions are subject to the $2,500 cap.
- **Draft and adopt a plan document.** While not subject to ERISA, Code Section 128 requires employers to maintain a "separate written plan" for their TACP. The plan must comply with rules in line with those governing Code Section 129 dependent care assistance programs (e.g., nondiscrimination, eligibility, notification and benefits statement requirements). Plan provisions should include (i) a contribution formula, (ii) any applicable eligibility requirements, (iii) the process for enrolling, (iv) the timing and

frequency of contributions, and (v) a statement that program is not an ERISA plan. Importantly, the plan should be timely communicated to eligible employees. An employer may satisfy its Code Section 128 "notice requirements" by distributing a copy of its written plan document to employees.

- **Structure the program to avoid ERISA coverage or claims of fiduciary liability.** While Technical Release 2026-02 provides that TACPs are generally exempt from ERISA, employers should nonetheless (i) refrain from controlling the investment of any Trump Account, (ii) steer clear of recommending or endorsing IRA providers, (iii) not label or describe their program as an employer-sponsored retirement plan, (iv) avoid restrictive account use, and (v) decline any compensation from any party related to the accounts. This is particularly critical where the TACP is for the benefit of a minor employee.
- **Conduct annual nondiscrimination testing.** TACPs must satisfy nondiscrimination testing rules similar to those for dependent care assistance programs covering contributions, benefits and eligibility. In other words, TACPs may not discriminate in favor of highly compensated employees with regard to eligibility or benefits. We are still waiting for further guidance from the IRS regarding the discrimination testing requirements that will apply to TACPs.
- **Review payroll systems.** Payroll systems should be configured to track Code Section 128 contributions separately from wages, and also the contribution limit (currently $2,500 per employee until indexed). Furthermore, when making a contribution, an employer must affirmatively inform the Trump Account trustee that it is a Code Section 128 employer contribution.
- **Consult vendors.** Employers should contact their vendors, or explore potential vendors, to determine their ability to administer TACPs and related administrative and legal compliance obligations.

Trump Accounts represent a meaningful new addition to the tax-advantaged savings landscape offered by employers, and a real opportunity to enhance benefits packages with a unique child-focused benefit. Technical Release 2026-02 provides welcome clarity that Trump Accounts can avoid ERISA coverage, reducing administrative burden and fiduciary risk, but they must be structured carefully. If you have questions about Trump Accounts, please contact the Trucker Huss attorney with whom you normally work.

Supreme Court Resolves Circuit Split on Timing for Selection of Actuarial Assumptions to Calculate Multiemployer Pension Withdrawal Liability

Stephanie Platenkamp

The United States Supreme Court recently held in *M&K Employee Solutions, LLC et al. v. Trustees of the IAM National Pension Fund* that the Employee Retirement Income Security Act of 1974 ("ERISA") does not require that the actuarial assumptions used to calculate withdrawal liability be selected on or before the statutory measurement date. In doing so, the Court resolved a split between the Second and D.C. Circuits on when those assumptions may be selected.

What is withdrawal liability?

Withdrawal liability is the proportionate share of a multiemployer pension plan's unfunded vested benefits owed by a contributing employer that partially or completely withdraws from the plan. A multiemployer pension plan is a plan to which more than one employer contributes and that is maintained pursuant to one or more collective bargaining agreements. ERISA requires employers that withdraw from an underfunded multiemployer pension plan to pay their share of the plan's unfunded vested benefits to assist in ensuring that the plan remains able to pay benefits to retirees.

Withdrawal liability must be calculated "as of" the last day of the plan year preceding the withdrawal, also referred to as the "measurement date." (ERISA §§ 1391(b)(3)(E)(i), (c)(2)(C)(i), (3)(A), (4)(A).) Plan actuaries use both hard data, such as the value of plan assets and the number of beneficiaries, and assumptions about future assets and obligations to determine the value of unfunded vested benefits. A key assumption is the "discount rate," which is the interest rate used to discount future benefit payments to present value. A higher discount rate lowers the value of the plan's unfunded vested benefits, which in turn lowers the withdrawal liability assessment for the withdrawing employer.

Withdrawal liability calculations are complex, and ERISA requires plans to provide the withdrawn employer with adequate notice of the amount owed and the basis for the assessment. ERISA also provides the withdrawn employer with a process to challenge the assessment, culminating in binding arbitration.

Case Background

The lawsuit was filed by four contributing employers that withdrew from the IAM National Pension Fund (the "Fund") in 2018. The employers challenged the Fund's withdrawal liability assessments based on the discount rate used by the Fund's actuary, Cheiron, to calculate each employer's obligation. In November 2017, Cheiron used a 7.5% discount rate for the Fund's annual valuation for the 2016 plan year, resulting in unfunded vested benefits of approximately $500 million. Two months later, Cheiron met with the Fund's trustees to discuss the assumptions it would use to calculate the employers' withdrawal liability and determined that it would use a 6.5% discount rate. That one-percentage-point difference substantially increased the withdrawal liability assessments. For example, M & K Employee Solutions' assessment increased from $1.8 million at a 7.5% discount rate to $6.2 million at a 6.5% discount rate.

In each resulting arbitration, the arbitrator held that the assessments were improper because the Fund applied actuarial assumptions adopted after the measurement date of December 31, 2017. The Fund sought review of the arbitration decisions by the district court, which found that the arbitrators had erred in concluding that the Fund actuaries must use "assumptions and methods in effect" on the valuation date. The D.C. Circuit affirmed the district courts' reversal, reasoning that limiting actuaries to assumptions adopted before the close of business on the measurement date would conflict with ERISA's instruction to use the actuary's "best estimate" of the plan's anticipated experience as of that date. Therefore, actuaries may adopt assumptions after the measurement date so long as those assumptions are "based on the body of knowledge available up to the measurement date."

The D.C. Circuit's decision created a split with the Second Circuit Court of Appeals, which had held in another case that multiemployer plans must adopt interest rate assumptions for withdrawal liability purposes on or before the measurement date. The Supreme Court granted certiorari to resolve when actuarial assumptions may be selected for purposes of calculating withdrawal liability.

The Decision

In a unanimous decision authored by Justice Ketanji Brown Jackson, the Supreme Court agreed with the Fund, finding that there is no statutory requirement that actuaries use assumptions adopted prior to or on the measurement date.

Justice Jackson noted that ERISA imposes few substantive requirements on the selection of actuarial assumptions. It requires only that the actuary use “assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary’s best estimate of anticipated experience under the plan.” (ERISA § 1393(a)(1).)

The Court focused on the nature of actuarial assumptions as predictive judgments or tools that actuaries use to calculate a plan’s unfunded vested benefits, rather than as “facts.” The Court reasoned that assumptions are akin to the “methods” referenced in ERISA § 1393; they are selected and used to determine unfunded vested benefits, but they are not observable facts that are “in effect” on a particular date. Citing actuarial professional guidelines, the Court explained that actuaries identify the assumptions appropriate for a specific measurement when the need for an actuarial valuation arises. In short, assumptions are not “in effect” for a defined period, as the contributing employers argued. Because actuarial assumptions are tools rather than hard data, they cannot be “frozen” on the measurement date. ERISA’s “as of” requirement sets the reference point for factual inputs into the unfunded vested benefits calculation, but it does not dictate when actuaries must select the assumptions used in that calculation.

The Court also relied on a fundamental canon of statutory construction: when Congress includes particular language in one section of a statute but omits it from another section of the same act, the omission is presumed intentional. Specifically, Congress included timing language elsewhere in the same statutory scheme, yet ERISA § 1393 contains no deadline for selecting actuarial assumptions. For example, ERISA specifies that the amortization period for an employer’s withdrawal liability payments must be determined based on “the assumptions used for the most recent actuarial valuation for the plan.” (ERISA § 1393(c)(1)(A)(ii).) The Court therefore declined to read a timing limitation into the statute that does not appear in its text.

The Court also made a practical point: relevant information about a plan’s performance or broader economic conditions as of the measurement date is often not available until after that date. Requiring actuaries to rely only on assumptions selected before the measurement date would prevent them from considering the most up-to-date information available, undermining ERISA’s requirement that the assumptions reflect the actuary’s best estimate under § 1393(a)(1).

The Court rejected the petitioners’ arguments that ERISA’s prohibition on retroactive plan amendments should apply to actuarial assumptions and that allowing assumptions to be selected after the measurement date would invite manipulation.

The Court’s decision does not upend longstanding actuarial practice and provides a degree of certainty for multiemployer plans and withdrawing employers by confirming that withdrawal liability assumptions need not be selected on or before the measurement date. The decision should reduce timing-based challenges to withdrawal liability assessments while keeping the focus where ERISA places it; that is, on whether the assumptions, in the aggregate, are reasonable and represent the actuary’s best estimate based on information available as of the measurement date.

Key Takeaways

- **No timing restriction on assumption selection:** Actuaries retain flexibility to select assumptions after the measurement date, provided those assumptions reflect the actuary's best estimate of anticipated plan experience based on information available as of that date. Employers can always challenge such assumptions through binding arbitration.
- **Actuarial assumptions are "tools," not "facts":** The Court emphasized that actuarial assumptions are predictive judgments used to estimate future experience—not fixed data points—and therefore are not subject to being "frozen" as of a specific date.
- **Practical takeaway for plans and employers:** Plans should ensure that withdrawal liability assessments clearly document the information considered and the actuarial rationale for the assumptions selected, while employers evaluating an assessment should focus challenges on the reasonableness of the assumptions and whether they reflect the actuary's best estimate, rather than on when the assumptions were adopted.

If you have questions about the Supreme Court's decision in *M&K Employee Solutions* or its impact, please contact us.

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