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Employers Beware: Unfunded Vested Liability Is Back!

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As mentioned at the last Williams Kastner Labor & Employment Practice Group Seminar (Reductions in Force: Reducing the Legal and Personal Risks, March 12, 2009), many pension plans sought to take advantage of the boom market before the latest economic turndown and converted their trust fund pension plans from defined contribution plans to defined benefit plans. This led to extraordinary returns and assets for these plans until the current economic crisis. Now employers participating in these plans are hearing a term not heard since the early Eighties -- unfunded vested liability. This represents the shortfall between the amount of trust fund contributions going in and the vested benefits due retirees. Recent headlines announced that pension plans sponsored by the automobile industry had unfunded benefit liabilities totaling more than $60 billion. The employer bill for this unfunded vested liability typically comes due when the employer leaves the plan as a result of a closure of operations, termination of a union plan in favor of an employer plan or a decertification by unionized employees.

When planning on a potential reduction in force, plant closure, or when contemplating signing a union agreement with a union pension plan, employers need to determine the existence and amount of potential withdrawal liability in order to effectively plan ahead. This information is readily available from trust fund plan administrators. Hopefully, economic turnaround will result in a lessening and ultimate absence of unfunded vested liability. However, unless and until that happens, employers should be aware that this potential liability is out there.