PENSIONS—
Standards Are Now LAW

The New Pension Reform Bill Is Pervasive and Complex; It’s Also Exacting

“This legislation will probably provide more benefits and success in the area of labor and management than anything in the history of this country.”

So saying, President Gerald R. Ford signed into law on Labor Day the major legislative accomplishment of the 93rd Congress—the Employee Retirement Income Security Act of 1974.

The new law which is the first government pension reform bill is designed to provide minimum federal standards for private pension plans and to ensure adequate retirement for America’s labor and management workers.

Long and complex, the bill will require profound changes in many company’s pension policies, and has prompted more than one pension plan consultant to warn his clients that their plans will need to be re-written from beginning to end.

As it is, each existing pension plan needs to be checked point by point to assure compliance with the new Federal standards and their exacting requirements. And, as the Departments of Labor and Treasury, who share jurisdiction for administering the rules, develop the regulations in line with the legislation passed by Congress, more and different aspects will emerge.

Basically, the new law establishes:

—procedures for qualifying and registering plans with the Department of Treasury and Labor.
—stringent standards for plan fiduciaries including a broad definition of fiduciary and detailed prohibited transactions.
—reporting requirements regarding conditions and operations of all employee benefit funds (pension, welfare, etc.) to both the Departments of Treasury and Labor.
—requirements regarding disclosure to plan participants of plan contents, participants’ rights and procedures.
—minimum participation (eligibility), vesting and funding standards.
—a system of insurance of nonforfeitable (vested) benefits, and contingent employer liability to the insurance corporation in event of a plan termination.
—a role for the Department of Labor, the new pension insurance, and participants in the qualifying and registration procedures.
—regulatory authority in the Departments of Treasury and Labor with obligation to coordinate regulations and reporting.
—coverage of all employee benefit plans which seek tax qualification or which are subject to jurisdiction under the Commerce clause.
—means by which individuals not covered by a retirement plan may set up their own plans and obtain preferential tax treatment.
new limits on deductibility of contribution to retirement plans.

The Secretary of the Treasury is given authority under the Act to write regulations on participation, vesting, and funding except that the Secretary of Labor is directed to prescribe regulations in a few select areas, particularly on reporting and disclosures.

The two departments are to coordinate their activities, and any regulations prescribed by one department are to be binding on the other.

Contractors wanting specific information on certain sections of the law are urged to consult with their attorney or a professional actuary. Reference to the actual law itself, which is some 250 pages long and includes 150 sections, 19 parts and 4 titles, would be invaluable.

Listed below are summaries of the principle sections that should have the most effect on interior and exterior finishing systems contractors:

### Reporting and Disclosure

A “summary plan description” (written so as to be easily understood by the average plan participant) must be provided within 120 days after a plan’s effective date, or 90 days after an individual becomes a participant, and employees are to have access to other financial statements. In addition, the Secretary of Labor will be able to demand information and to take into court companies that fail to file properly. Reports on existing plans must be filed starting next year.

The administrator of the plan must file an annual report within 210 days after the end of the plan year and this must contain an audited financial statement, a certified actuarial report and other scheduled financial items.

### Fiduciary Responsibility

All assets of an employee benefit plan are to be held in trust by one or more trustees subject to certain exceptions (insurance contracts), although the Secretary of Labor may exempt welfare plans from this requirement.

Also, every plan must be maintained pursuant to a written instrument which provides for one or more “named fiduciaries” who jointly and severally have authority to control and manage the operation of the plan.

Fiduciaries are required to discharge their duties with respect to the fund solely in the interest of the participants and their beneficiaries as would a “prudent man.” Several types of transactions are specifically forbidden.

### Minimum Funding

Beginning January 1, 1976, companies with retirement programs must meet new funding standards which require that normal costs of administering a plan are to be funded currently, while multi-employer plans are required to amortize their past service costs over 40 years.

Formal pension funds will need to be created and administered under trust arrangements or invested through an insurance company. Pension-plan assets will have to be made independent of the future prosperity of the employer.

Also, companies will be required to set up and follow contribution schedules which, in the opinion of competent actuaries, are adequate to finance pension obligations of the plans.

An enrolled actuary is to be retained by the plan administrator on behalf of the participants to evaluate the plan’s funding status (at least every 3 years) and to offer his opinion as to whether the required figures represent his best estimate of anticipated experience under the plan.

This means that if current pension fund contributions are not adequate to meet funding stand-
ards, an increased contribution rate becomes a Federal requirement and is not a question of collective bargaining.

Eligibility

Although the law does not require a company to have a pension plan, certain requirements apply to those companies who do. Beginning immediately for new plans, and January, 1976, for old ones, plans must cover all employees who are at least 25 years old and have at least one year of service (a 12-month period in which the employee worked at least 1,000 hours).

An employee starting work before age 25 may credit up to 3 years of that service at age 25.

Vesting

Employers are permitted to choose one of three vesting plans: 1) 25% vested after 5 years, then increasing at 5% per year during the following 5 years and then increasing again to 10% per year during the next 5 years so that after 15 years an employee is fully vested; 2) no vesting per year but 100% vested at the end of the 10th year; or, 3) the “rule of 45” which guarantees a worker half his or her benefits when age and years of service total 45, and then increasing at 10% per year until fully vested.

Under this latter option, though, the worker would have to have at least 5 years of service, but younger employees would be entitled to their full pension benefits after 15 years of service.

Portability

There is no portability requirement. But with the consent and cooperation of their employers, employees can take vested credits and funds with them for incorporation into the pension plans of new employers.

Termination Insurance

To guarantee the benefits of participants in private pension plans, a pension benefit guarantee corporation is established in the Department of Labor.

If a plan collapses with insufficient assets to pay benefits, the corporation could pay workers up to $750 a month from an initial $100 million borrowing authority and, later, from insurance premiums paid by employers.

Premiums to be paid to the corporation must be paid for the first two years at the rate of $1 per participant for single employer plans and $.50 per participant for multiemployer plans.

Termination insurance coverage for single employer plans became effective July 1, 1974, and for multi-employer plans it will become effective on January 1, 1975. Premium rates will be reassessed and perhaps changed after a two-year experience period.

The corporation will guarantee vested benefits at 100% or $750 per month, whichever is higher.

Individual Retirement Plans

The present contribution limits to self-employed plans is increased from $2,500 to $7,500 (or 15% of earned income if less).

Limitations

Pension, profit-sharing, annuity, self-employed, and all other tax qualified plans are now subject to certain overall benefit and contribution restrictions. Generally, a pension plan may not provide benefits greater than $75,000 per year.

Contributions on behalf of an individual to a profit-sharing or other defined contribution plan is limited to a lesser of $25,000 or 25% of compensation.

All plans of the employer are combined for the purpose of testing the limitations.

If not covered by private or government pension plans, individuals may deduct up to 20% of earned income, not to exceed $1,500 annually for retirement savings. This may be put aside in a special “Individual Retirement Account.” This amount may not be drawn upon without penalty before age 59%. Benefits would begin by 70½.

Enforcement

Criminal sanctions may be imposed on persons who willfully violate the reporting and disclosure provisions of the Act or who use coercive force to interfere with employee rights under the Act.

Additionally, the Secretary of Labor or any participant or beneficiary may bring a civil action to enjoin any act which violates and provision of Title 1 and to recover denied benefits.

In effect, this means that employers may not fine, discharge, suspend, or otherwise harass an employee in order to prevent his receipt of pension benefits or reaching participation levels for benefit eligibility.