

# Harry & David asks to drop \$27.4 million pension plan

## If the bankruptcy court gives its OK, the Pension Benefit Guaranty Corp. will take over paying the benefits for those who qualify

By [Greg Stiles](#)

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Harry & David Holdings plans to jettison its \$27.4 million pension plan, pending approval by a Delaware bankruptcy court.

While that news likely sent a shudder through the ranks of the approximately 3,000 active, retired or former workers vested in the pension plan, they have little cause for worry, a spokesman for the Pension Benefit Guaranty Corp. in Washington, D.C., said Tuesday.

The federal agency, whose mission is to make good on private pension payments when the sponsoring companies become insolvent, doesn't speak to specific cases, but its track record is reassuring.

Since the agency was formed in 1974, PBGC has paid 85 percent of pensioners. Private sector companies pay premiums to PBGC much the same as banks pay the Federal Deposit Insurance Corp.

In Harry & David's terms for proposed restructuring submitted on Monday, the company said it would file a motion to terminate the pension plan within 35 days, pending court approval.

Although Chief Financial Officer Ed Dunlap is listed as the contact on court documents, it's unclear who will represent pension-plan interests. Darrell Burnett, Harry & David's retirement plans director, declined to specify who could comment on the matter.

As part of an interim order authorizing Harry & David to pay employee wages, benefits, business expenses and other related items on Tuesday, U.S. Bankruptcy Judge Mary F. Walrath, gave the go-ahead to "make minimum required contributions as required by law" due in April.

Defined benefit plans have declined throughout corporate America during the past decade, giving way to more speculative 401(k) plans.

Harry & David made the shift to 401(k) plans to shore up its finances several years ago and announced the end of defined benefit pension activity in June 2007.

A former employee said the company matched up to 5 percent during the early stages of the defined contribution plan.

"There are relatively few defined benefit plans anymore," said Al Kennedy, a bankruptcy attorney with Portland-based Tonkon Torp.

However, the pension plans Kennedy has seen taken to bankruptcy court in recent times were not rejected.

"The question is, 'Are the judges more sympathetic to Bruce Wasserstein (the late founder of

Wasserstein & Co., which controls Harry & David's stock) or an employee in Medford?" Kennedy said. "One of the facts is that you never know what a judge is going to do."

When a company files for bankruptcy and convinces a bankruptcy judge it can't successfully reorganize without shedding a pension plan, that's when PBGC steps in, said Gary Pastorius, an agency spokesman.

"If the company doesn't have enough money to pay everybody off," he said, "we become trustee of the pension plan and we pay the benefits. With no cost to the taxpayers."

Companies pay a \$35 per employee premium annually. If the pension is underfunded, it pays \$9 for every \$1,000 it is underfunded. Some reports have suggested that PBGC does not have sufficient assets to cover employees facing the loss of their pensions, but Pastorius said the agency is on solid footing.

"On an actuarial basis we're underfunded, but our cash flow is very sufficient to pay benefits," Pastorius said.

Pension payout limits are based on retirement age. For those who retire at age 65, the ceiling is \$54,000 annually. For those who retire at 55, the maximum would be \$24,300, while those who retire at 75 would be eligible to collect up to \$164,000 annually.

In other matters before the Delaware Court Tuesday, Harry & David got interim approval to borrow up to \$155 million while it reorganizes. The company asked for a \$100 million loan from a group of lenders it made agreements with immediately before its bankruptcy filing.

The company also has approval to access up to \$30 million of a \$55 million loan from a group of noteholders and one of the company's private equity owners, and reportedly plans to use that money as working capital.

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