



EMPLOYEE BENEFITS

IN FOCUS

FOR CLIENTS & FRIENDS

JULY 24, 2025 EDITION

THE GROWING THREAT: 401(K) PLAN FIDUCIARIES FACE ESCALATING LAWSUIT RISK

In recent years, 401(k) plans have faced a troubling surge in lawsuits, placing plan fiduciaries under significant legal scrutiny. Plaintiffs' firms have found fertile ground to bring multi-million-dollar claims. These lawsuits, once primarily aimed at large plans, now have expanded to include Taft-Hartley plans and smaller plans. As retirement plan regulations continue to evolve, such as the Department of Labor's recent guidance returning the Department to a neutral approach as to whether retirement plans may invest in cryptocurrencies, the risks to plan fiduciaries are poised to grow even further.

These litigation claims typically focus on the fiduciary duties of prudence and loyalty under the Employee Retirement Income Securities Act of 1974, *as amended* ("ERISA") that require fiduciaries to act prudently and solely in the interest of plan participants and beneficiaries. A key part of the duty of prudence, reinforced by the Supreme Court in *Tibble v. Edison International*, 575 U.S. 523 (2015), is the ongoing fiduciary responsibility to monitor investments and continually assess whether fees remain reasonable and whether investments are performing appropriately.

Some common allegations in these lawsuits include that trustees breached their fiduciary duty by including investment options with higher fees as compared to other similar available alternatives. In a recent case against the Hess Corporation's retirement fund's trustees, a court denied a motion to dismiss, holding that plaintiffs brought a reasonable claim for failing to switch to a comparable investment option that had a reduced fee by only a few basis points. Another common claim is that fiduciaries violated their duties by failing to remove underperforming investments. Other claims include that plans should not have retained actively managed investments, which typically incur higher costs than passively managed alternatives.

In 2024 alone, 136 new ERISA class action lawsuits were filed, 65 of them challenging excessive fees. This trend shows no sign of slowing in 2025. Many of these cases end in settlement, with 2024 marking a record year of payouts, exceeding \$200 million. Increasingly, Taft-Hartley funds are facing such lawsuits.

Trustees are no longer shielded from liability even where they have delegated investment decisions to outsourced chief investment officers ("OCIOs"), investment consultants, or investment managers, as is highlighted in *Ramirez v. J.C. Penney Corp.*,

6:14-CV-00601-KNM, at *3 (E.D. Tex. Sept. 11, 2015), where the trustees tried to argue they were not responsible for any fiduciary breaches because they delegated the management of plan assets to an investment manager. The court disagreed, emphasizing the trustees' inherent duty to monitor even delegated investment decisions. The trustees could not avoid liability simply by outsourcing those responsibilities. The case ultimately settled for \$4.5 million in 2017.

Recent Supreme Court cases and actions may result in significantly more cases being filed. *Cunningham v. Cornell University*, 604 U.S. ____ (2025), decided on April 17, 2025, has lowered the bar for plaintiffs to bring ERISA § 406 claims, allowing them to survive more easily at the motion to dismiss stage.

The ERISA litigation landscape is changing fast. The idea that fiduciaries can delegate away all liability by hiring experts no longer holds true. Court rulings, particularly *Tibble v. Edison International*, confirm that fiduciaries have a continuous, non-delegable duty to actively monitor a plan's investments and its performance. Passive oversight is no longer an option. Trustees should conduct regular investment reviews and fee benchmarking, rigorously document ongoing monitoring processes, and ensure all decisions are in the best interests of plan participants and beneficiaries.

SCOTUS WILL ADDRESS CIRCUIT SPLIT ON WITHDRAWAL LIABILITY INTEREST RATE ASSUMPTIONS

On June 30, 2025, the Supreme Court of the United States ("SCOTUS") announced that it will hear a case regarding how actuaries must calculate the liability of employers withdrawing from multiemployer pension plans. The case is an appeal from *Trustees of IAM National Pension Fund v. M & K Employee Solutions, LLC*, 92 F.4th 316 (D.C. Cir. 2024), wherein the United States Court of Appeals for the D.C. Circuit ruled that a pension fund's actuary properly calculated an employer's withdrawal liability using actuarial interest rate assumptions adopted after the "measurement date," which is the plan year immediately preceding the year in which the employer ceased contributing to the plan. Specifically, the issue in that case was whether an actuary may apply interest rate assumptions based on information that was available "as of" the measurement date, even if those assumptions were not in effect on the measurement date itself. In answering this question in the affirmative, the D.C. Circuit split with the Second Circuit, which has held that pension funds must calculate withdrawal liability using the interest rate assumptions that were in effect *on* the measurement date.

On July 3, 2025, on advisement by the United States Solicitor General, SCOTUS amended the question presented. The amended question on review, which may be read

in its entirety [here](#), now asks whether the Employee Retirement Income Security Act of 1974 as amended (“ERISA”) by the Multiemployer Pension Plan Amendments Act of 1980, which requires that withdrawal liability be computed “as of the end of the plan year,” specifically requires the plan to calculate withdrawal liability based on “the actuarial assumptions most recently adopted before the end of the year,” or whether this language “allows the plan to use different actuarial assumptions that were adopted after, but based on information available as of, the end of the year.” Although these distinctions may appear largely semantic, small variations in actuarial assumptions can have enormous impacts on the amount of a withdrawing employer’s liability.

FEDERAL PREEMPTION BLOCKS ATTEMPTED PENSION FUND GARNISHMENT

On June 10, 2025, the United States Court of Appeals for the Second Circuit affirmed that retirement cash management (“RCM”) accounts (investment-only brokerage account for retirement plan assets) cannot be garnished to satisfy part of an arbitration award. Although a New York law purports to allow the restraint of such accounts, the anti-alienation provision of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) preempts the state law. The case is *Off. Create Corp. v. Planet Ent. LLC*, No. 24-1879 (2d Cir. June 10, 2025).

Office Create Corp., a video game franchise company, brought this action in district court to confirm an arbitration award against Planet Entertainment, LLC. The arbitration involved an intellectual property dispute originating from an unfinished release of an installment in Office Create Corp.’s *Cooking Mama* video game series. When their petition was granted, Office Create Corp. served an Information Subpoena and Restraining Notice on accounts, including the RCM accounts, they argued were controlled by Steve Grossman, the founder of Planet Entertainment, LLC, to help fulfill the money judgment. Planet Entertainment, LLC contended that the RCM accounts were exempt from collection under ERISA because the accounts constitute payments from pensions. Office Create Corp. argued that New York Civil Practice Law and Rules (“CPLR”) § 5205 enables funds from RCM accounts to be garnished where those funds are added to accounts within ninety days prior to “the interposition of the claim on which such judgment was entered.” However, the district court ruled in favor of Planet Entertainment, LLC, who argued that the RCM accounts were “ERISA-qualifying” and that ERISA preempts CPLR § 5205 due to its anti-alienation provision. Office Create Corp. appealed that decision to the Second Circuit.

A panel of Judges Calabresi, Chin, and Merriam affirmed the District Court’s ruling that ERISA preempted CPLR § 5205 and that Grossman’s RCM accounts cannot be garnished to satisfy Office Create Corp.’s money judgment. Rooted in the Supremacy

Clause of the Constitution, the doctrine of federal preemption nullifies a state law that conflicts with a federal law. However, to establish such a conflict, it must be shown that Congress had a “clear and manifest purpose” in displacing state law. The panel observed ERISA’s express preemption clause, which states that “ERISA ‘shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.’”

The Court then considered ERISA’s anti-alienation provision, which requires that retirement funds remain “inviolable until retirement.” Although CPLR § 5205 similarly exempts retirement accounts and pension plans from garnishment actions, the “ninety-day ‘look-back period’” exception to the exemption would have allowed such garnishment of Grossman’s RCM accounts. This exception “presents a direct conflict with ERISA’s anti-alienation provision” and therefore is preempted by ERISA.

A FEW REMINDERS **(Based on calendar-year plans)**

These reminders are for informational purposes only and are not intended to replace your regular compliance calendar as they do not include all deadlines that may be applicable to your plan.

ALL PLANS

- **Summary of Material Modifications (“SMM”)**
 - July 28, 2025 is the deadline by which plan administrators must furnish an SMM to participants and beneficiaries receiving benefits explaining a material plan change that was adopted in Calendar Year 2024 unless a revised Summary Plan Description containing the modification was distributed.
- **Form 5500 Series (Annual Return/Report of Employee Benefit Plan) and Schedules**
 - July 31, 2025 is the deadline by which a plan administrator must file the Form 5500 unless an extension is granted by filing the Form 5558 before the due date.

HEALTH AND WELFARE PLANS

- **Form 720, Quarterly Federal Excise Tax Return**
 - July 31, 2025 is the deadline by which self-insured group health plans must pay its fees to the Patient-Centered Outcomes Research Institute (“PCORI”) by filing the Form 720.

DEFINED BENEFIT AND DEFINED CONTRIBUTION PLANS

- **Form 8955-SSA**
 - July 31, 2025 is the deadline by which the Form 8955-SSA must be filed by the plan to identify separated participants with deferred vested benefits unless an extension is granted by filing the Form 5558 before the due date.

DEFINED BENEFIT PLANS

- **Quarterly Installments of Required Contributions**
 - July 15, 2025 is the deadline by which second quarter 2025 contributions are due.

DEFINED CONTRIBUTION PLANS

- **Form 5330**
 - July 31, 2025 is the deadline by which the Form 5330 must be filed if the plan had delayed contribution deposits for the prior calendar year.

AUGUST

DEFINED CONTRIBUTION PLANS

- **Second Quarter Pension Benefit Statements**
 - August 14, 2025 is the deadline by which benefit statements for the quarter ending June 30, 2025 must be sent to participants and beneficiaries.

Legal Advice Disclaimer: The materials in this **In Focus** report are provided for informational purposes only and are not intended to be a comprehensive review of legal developments, to create a client–attorney relationship, to provide legal advice, or to render a legal opinion. Readers are cautioned not to attempt to solve specific legal problems on the basis of information contained in this **In Focus**. If legal advice is required, please consult an attorney. The information contained herein, does not necessarily reflect the opinions of Pitta LLP, or any of its attorneys or clients. Neither Pitta LLP, nor its employees make any warranty, expressed or implied, and assume no legal liability with respect to the information in this report, and do not guarantee that the information is accurate, complete, useful or current. Accordingly, Pitta LLP is not responsible for any claimed damages resulting from any alleged error, inaccuracy, or omission. This communication may be considered an advertisement or solicitation.

To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or any other labor or employment related issues in general, please contact the Pitta LLP attorney with whom you usually work.

To Our Clients and Friends: To request that copies of this publication be sent to a new address or fax number, to unsubscribe, or to comment on its contents, please contact Aseneth Wheeler-Russell at arussell@pittalaw.com or (212) 652-3797.