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The Top 10 Things You Should Know About Benefits in 2024

Association of Corporate Counsel
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Heather Ryan & Elizabeth Smith

Benefits Legal Landscape

- Employee benefits are primarily governed by:
  - The Employee Retirement Income Security Act of 1974 (ERISA), a federal law that sets minimum standards for private industry retirement and health plans to provide protections for participants in such plans; and
  - The Internal Revenue Code (the “Code”), the federal tax laws that establish the requirements by which employee benefit plans must abide to receive favorable tax treatment.
- Many different pieces of legislation interact with ERISA plans and impose additional requirements (ACA, HIPAA, COBRA, SECURE Act of 2019, CARES Act).
- The SECURE 2.0 Act of 2022 introduced almost 100 new retirement provisions, with effective dates spanning from 2022 to 2033.
- This area of law is ever-evolving and is not going away.

How Do Benefits Trends Appear in Your Life?

- Benefits trends are all around you! Our goal is to equip you to (1) recognize and respond to benefits issues raised by your business team and/or implicated in business decisions and (2) proactively address legal requirements.

How the Pandemic Boosted Working From Home — U.S. News and World Report

At a Time of Financial Stress, 401(k) Fees Matter More Than Ever — NYT

ESG And DEI: Why They Matter For Long-Term Sustainability — Forbes

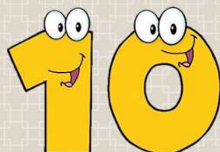
Short on Cash, More Americans Tap 401(k) Savings for Emergencies — WSJ

Agenda

I. Top 10 Topics
- SECURE 2.0 Act
- SECURE 2.0: Long-Term Part-Time Employee Rules
- SECURE 2.0: Roth Catch-Up Contributions
- Cybersecurity
- Recurring Issues in Benefits Contracts
- DEI Considerations in Plan Administration
- Fiduciary Consideration of ESG Factors
- Controlled Group and Affiliated Service Group Rules
- Forfeiture Litigation
- Excessive Fee Litigation

II. For each topic, “What Are Your Next Steps?”

RB Insight



SECURE 2.0 Act

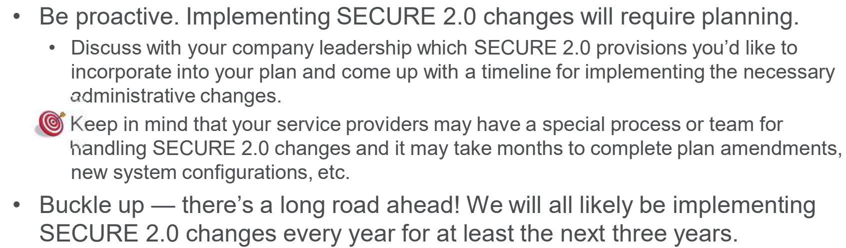
Overview

- Signed into law in late December 2022, SECURE 2.0 is a sweeping piece of legislation that builds upon the SECURE Act of 2019 in an effort to modernize the American retirement plan system, simplify and clarify existing retirement plan rules, increase Americans' retirement savings and expand access to such savings.

Important Effective Dates

SECURE 2.0 Provision	Effective Date
Employers may increase the mandatory automatic cash-out threshold from $5,000 to $7,000.	Jan. 1, 2024
Employers may make matching contributions with respect to student loan repayments.	Jan. 1, 2024
The DOL must create a comprehensive "lost and found" database for retirement plans.	No later than Dec. 28, 2024
The limit on catch-up contributions for individuals ages 60-63 (inclusive) will be increased to the greater of (i) $10,000 or (ii) 150% of the regular catch-up amount, indexed for inflation.	Jan. 1, 2025
New plans must automatically enroll eligible employees.	Jan. 1, 2025

What Are Your Next Steps?



- Be proactive. Implementing SECURE 2.0 changes will require planning.
  - Discuss with your company leadership which SECURE 2.0 provisions you'd like to incorporate into your plan and come up with a timeline for implementing the necessary administrative changes.
  - Keep in mind that your service providers may have a special process or team for handling SECURE 2.0 changes and it may take months to complete plan amendments, new system configurations, etc.
- Buckle up — there's a long road ahead! We will all likely be implementing SECURE 2.0 changes every year for at least the next three years.

SECURE Act of 2019 and SECURE 2.0 Act: Long-Term Part-Time Employees

Legal Background

- Through SECURE Act of 2019 and SECURE 2.0, Congress aimed to expand access to and participation in retirement savings vehicles, including by easing service requirements for eligibility.
- A deferral arrangement may require employees to complete a minimum period of service with an employer to participate. The Code limits the length of the service requirement that a deferral arrangement may impose.
  - Prior to the SECURE Act of 2019, the Code allowed a deferral arrangement to require employees to complete a 12-month period during which they are credited with at least 1,000 hours of service.
  - Both the SECURE Act of 2019 and the SECURE 2.0 Act shortened the maximum permissible length of the service requirement and established rules for long-term part-time (LTPT) employees.
  - The DOL issued Proposed Regulations regarding the new LTPT rules in November 2023.

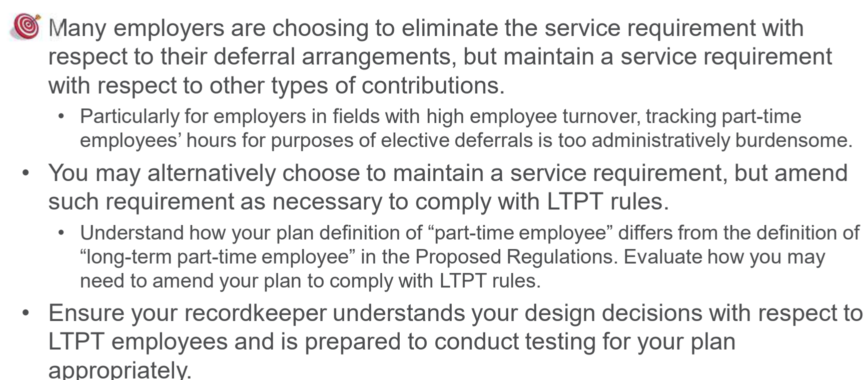
New LTPT Legislation

SECURE Act of 2019	SECURE 2.0 Act
A deferral arrangement may not require employees, as a condition of participation, to complete a period of service that extends beyond the end of **the earlier of**: • The first 12-month period during which they are credited with at least 1,000 hours of service; or • The first period of **three** consecutive 12-month periods during each of which they are credited with at least 500 hours of service.	A deferral arrangement may not require employees, as a condition of participation, to complete a period of service that extends beyond the end of **the earlier of**: • The first 12-month period during which they are credited with at least 1,000 hours of service; or • The first period of **two** consecutive 12-month periods during each of which they are credited with at least 500 hours of service.
Effective as of Jan. 1, 2024	Effective as of Jan. 1, 2025
Applicable to 401(k) plans, but not 403(b) plans	Applicable to both 401(k) and 403(b) plans

Proposed Regulations

- The new LTPT rules only apply to eligibility for participation in a deferral arrangement, such as an elective contribution arrangement. They do **not** apply to eligibility for other types of contributions to a qualified plan, such as nonelective and matching contributions.
- When counting service, an employer must take into account all 12-month periods beginning after Jan. 1, 2021, during which the employee is credited with 500+ hours of service. However, the LTPT rules require **consecutive** 12-month periods of 500+ hours of service and do **not** include terms regarding a break in service.
- Generally, an LTPT employee is any employee who is eligible to participate in a plan solely by reason of satisfying the applicable statutory service requirement.
- An employer may elect to exclude LTPT employees for purposes of nondiscrimination, coverage and top-heavy testing.

What Are Your Next Steps?



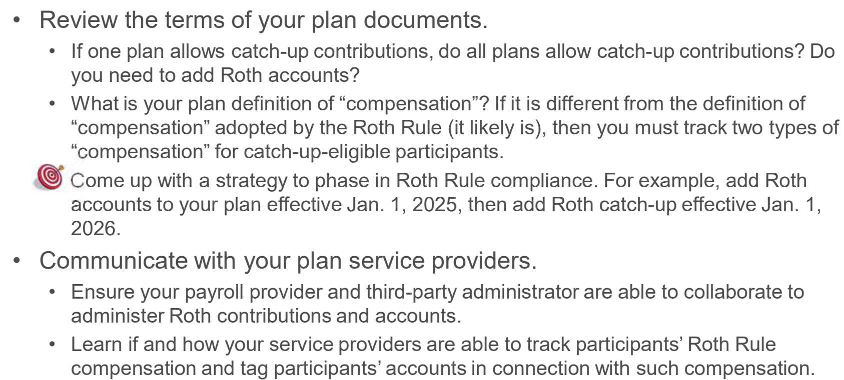
- Many employers are choosing to eliminate the service requirement with respect to their deferral arrangements, but maintain a service requirement with respect to other types of contributions.
  - Particularly for employers in fields with high employee turnover, tracking part-time employees' hours for purposes of elective deferrals is too administratively burdensome.
- You may alternatively choose to maintain a service requirement, but amend such requirement as necessary to comply with LTPT rules.
  - Understand how your plan definition of "part-time employee" differs from the definition of "long-term part-time employee" in the Proposed Regulations. Evaluate how you may need to amend your plan to comply with LTPT rules.
- Ensure your recordkeeper understands your design decisions with respect to LTPT employees and is prepared to conduct testing for your plan appropriately.

SECURE 2.0 Act:
Roth Catch-Up Contributions

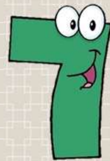
Roth Rule Terms and Transition

- For all plan years beginning on and after Jan. 1, 2024, employees who received annual compensation of $145,000 or more from their employer during the prior plan year may only make catch-up contributions on a Roth (after-tax) basis (the "Roth Rule").
  - If a plan offers catch-up contributions but does not offer Roth contributions, it must either add Roth accounts to its plan or remove catch-up contributions.
  - Due to IRS aggregation rules, if one plan of an employer permits catch-up contributions, all plans of that employer must permit catch-up contributions.
- Due to anticipated administrative difficulties in implementing the Roth Rule, the IRS announced a two-year transition period. **The rule will now become effective for plan years beginning on and after Jan. 1, 2026.**

What Are Your Next Steps?



- Review the terms of your plan documents.
  - If one plan allows catch-up contributions, do all plans allow catch-up contributions? Do you need to add Roth accounts?
  - What is your plan definition of “compensation”? If it is different from the definition of “compensation” adopted by the Roth Rule (it likely is), then you must track two types of “compensation” for catch-up-eligible participants.
  - Come up with a strategy to phase in Roth Rule compliance. For example, add Roth accounts to your plan effective Jan. 1, 2025, then add Roth catch-up effective Jan. 1, 2026.
- Communicate with your plan service providers.
  - Ensure your payroll provider and third-party administrator are able to collaborate to administer Roth contributions and accounts.
  - Learn if and how your service providers are able to track participants’ Roth Rule compensation and tag participants’ accounts in connection with such compensation.



Cybersecurity

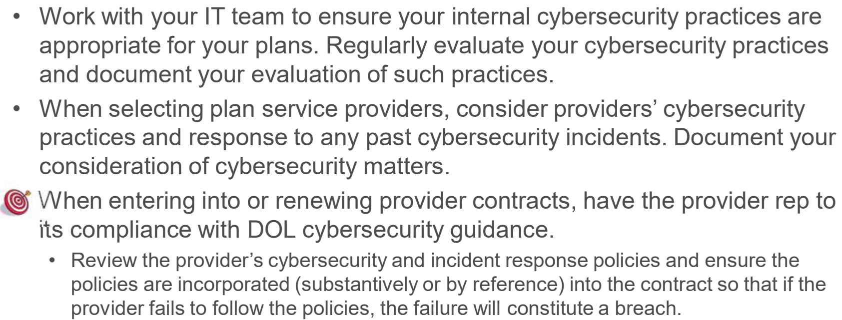
Regulatory Background

- In 2016, the ERISA Advisory Council presented to the DOL a report summarizing cybersecurity concerns for employee benefit plans and recommending that the DOL disseminate more information about managing cybersecurity risks.
  - "Not a question of IF, just a question of WHEN a breach will occur."
- In 2021, the DOL issued its "Cybersecurity Program Best Practices," which emphasizes that plan fiduciaries must ensure proper mitigation of cybersecurity risks faced by their ERISA plan.
  - The DOL has since updated its audit inquiries to include requests related to plan cybersecurity and will now audit compliance with its cybersecurity guidance.
- In 2023, a cyberattack on a single software maker compromised data at more than 600 organizations, including Charles Schwab, Fidelity, TIAA and CalPERs.

Cybersecurity Program Best Practices

- To fulfill their obligation to mitigate cybersecurity risks, plan fiduciaries must select service providers with strong cybersecurity practices.
- Plan service providers must, among other things:
  - Maintain a formal, well-documented cybersecurity program;
  - Conduct annual risk assessments and engage an independent third party to conduct an annual audit of security controls;
  - Encrypt sensitive data (stored and in transit);
  - Implement strong technical controls and access controls;
  - Have in place effective incident response, disaster recovery and business continuity policies; and
  - Ensure data stored by a third party is subject to appropriate security reviews and independent security assessments.

What Are Your Next Steps?



- Work with your IT team to ensure your internal cybersecurity practices are appropriate for your plans. Regularly evaluate your cybersecurity practices and document your evaluation of such practices.
- When selecting plan service providers, consider providers' cybersecurity practices and response to any past cybersecurity incidents. Document your consideration of cybersecurity matters.
- When entering into or renewing provider contracts, have the provider rep to its compliance with DOL cybersecurity guidance.
  - Review the provider's cybersecurity and incident response policies and ensure the policies are incorporated (substantively or by reference) into the contract so that if the provider fails to follow the policies, the failure will constitute a breach.

Recurring Issues in Benefits Contracts

Vendor Relationships

- Consultants, brokers and service providers sell one-size-fits-all products and in doing so, emphasize how such products require minimal effort on the part of plan sponsors and fiduciaries.
- The devil is in the details! In reality, pursuant to the terms of their contracts, vendors are taking on little responsibility. **You** remain responsible for compliance, fiduciary duties, reporting and disclosure obligations, etc.

What Should You Be Looking For?

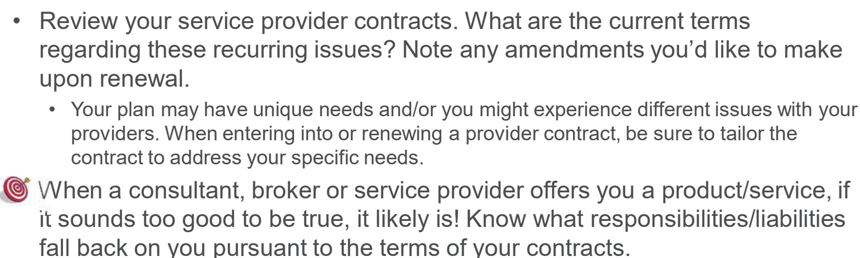
- **Timelines.** The timelines written into your contracts (e.g., relating to the parties' notification obligations) must be realistic given your business practices. Communicate with your business team to ensure timelines are workable.
- **"In Good Order."** Providers' form contracts typically require the plan to furnish information required by the provider "in Good Order," which term is either left undefined or defined to mean "in a condition acceptable to [service provider], as determined in [service provider's] sole discretion." Ensure the contract sets objective standards for determining whether your plan has provided information appropriately.
- **Indemnification and remedies.** Include robust indemnification provisions. Carve out any indemnity related to data privacy and cybersecurity from any limitation of liability or disclaimer of consequential damages.

What Should You Be Looking For?

- **Fee disclosures.** Given the proliferation of excessive fee litigation, before engaging any provider, request a detailed breakdown of fees. Include a provision in the contract requiring the provider to furnish to the plan, at least annually, a disclosure of all direct and indirect fees received in connection with the services performed.
- **Transition services.** Every service provider relationship comes to an end. In such event, the provider's obligations to facilitate your transition to another service provider are dictated by the terms of your contract. Ensure that your contract either (1) includes reasonable transition services provisions or (2) obligates the provider to negotiate transition terms in good faith upon termination of the contract. Pay close attention to increased fees for transition services and to how plan data will be handled/protected during the transition.

What Are Your Next Steps?

- Review your service provider contracts. What are the current terms regarding these recurring issues? Note any amendments you'd like to make upon renewal.
  - Your plan may have unique needs and/or you might experience different issues with your providers. When entering into or renewing a provider contract, be sure to tailor the contract to address your specific needs.



When a consultant, broker or service provider offers you a product/service, if it sounds too good to be true, it likely is! Know what responsibilities/liabilities fall back on you pursuant to the terms of your contracts.

DEI Considerations in Plan Administration

DEI Trends

- As more and more employers pledge their commitment to increase diversity, equity and inclusion (DEI) in the workplace, there is a trend toward assessing employee benefits through a DEI lens and promoting DEI efforts through benefit plans.
- DOL Advisory Opinion 2023-01A offers a road map to considering DEI in plan administration without breaching fiduciary responsibilities.
  - The fiduciary duty of loyalty requires that plan fiduciaries administer their ERISA plan solely for the benefit of plan participants and beneficiaries.

DOL Advisory Opinion 2023-01A

- Citigroup, Inc. and its affiliates ("Citi") requested DOL guidance on its proposed Action for Racial Equity Asset Manager Program (the "Program").
  - The Program is part of a larger Citi initiative to help close the racial wealth gap and increase economic mobility in the United States.
- Pursuant to the Program, Citi will pay some or all of the investment management fees for "Diverse Managers" retained by Citi-sponsored employee benefit plans.
  - A "Diverse Manager" is an investment manager with a certain total percentage of minority ownership and female ownership.
- Citi appointed an Investment Committee for each plan with authority over the plan's investments. Each Investment Committee is a fiduciary with respect to its plan and will select an investment manager for its plan.

DOL Conclusions

- Citi's establishment of the Program and paying of Diverse Manager's fees are settlor functions that do not alone impose fiduciary duties on Citi.
- The Investment Committee will not be deemed to have violated its fiduciary duties solely by reason of taking Citi's payment commitment into account when selecting an investment manager.
- Citi's disclosure of the Program to participants does not itself constitute improper influence by a plan sponsor with respect to participants' exercise of independent control over their plan accounts.

What Are Your Next Steps?

- If you're interested in promoting DEI initiatives in the administration of your plan, follow the framework set by Advisory Opinion 2023-01A. This is the best guidance we have regarding the consideration of social factors in compliance with ERISA requirements.
- If you haven't considered the intersection of DEI and benefits, this is likely to become an increasingly important area.
- Pay attention to how DOL guidance develops in light of recent case law establishing that race-conscious policies violate equal protection.
  - Successful challenges to affirmative action in college admissions could lead to similar challenges against vendor diversity programs.

Fiduciary Consideration of Environmental, Social and Governance Factors in Retirement Plan Investments

What Is ESG Investing?

- Investors consider environmental, social and governance (ESG) factors (in addition to financial factors) when evaluating investment options as a way to evaluate the investment's sustainability and overall impact.

Environmental	Social	Governance
• Carbon emissions • Air and water pollution • Green energy initiatives	• Employee diversity • Customer satisfaction • Lobbying or political contributions	• Executive pay • Internal corruption • Large-scale litigation • Data security

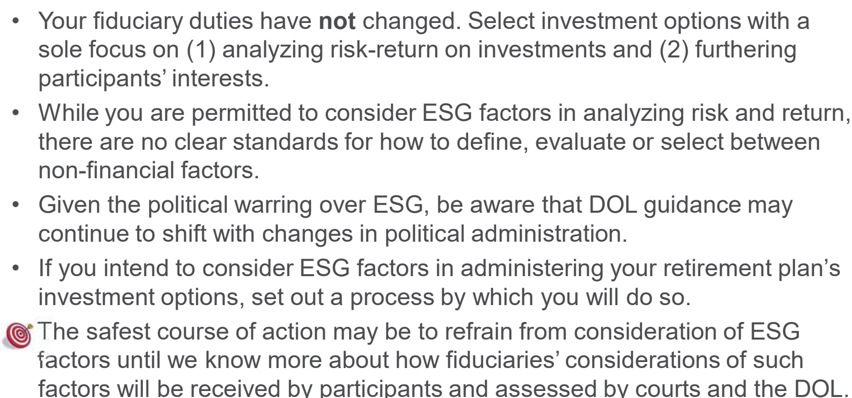
ESG and Fiduciary Duties

- ERISA retirement plan fiduciaries are responsible for selecting and maintaining the lineup of investment options in which participants may direct the investment of their retirement accounts.
- ESG investing has become increasingly popular. Plan participants may desire ESG-friendly investment options.
- When administering investment options for their plan, plan fiduciaries must (1) select/maintain investment options solely based on risk-return factors and (2) solely focus on protecting participants' interests rather than promoting social objectives unrelated to the retirement plan.

Political Chaos

- In 2020, the DOL (under the Trump Administration) adopted a final rule (the "2020 Rule") advising that ESG factors do **not** have a material impact on the risk and/or return of an investment. Plan fiduciaries may **not** consider ESG factors when selecting/maintaining investment options.
- In 2022, the DOL (under the Biden Administration) adopted a final rule (the "2022 Rule") taking a neutral position as to whether ESG factors constitute risk-return factors. Fiduciaries may consider ESG factors in administering investment options when they reasonably determine such factors to be relevant to risk and/or return.
- In 2023:
  - Congress passed a joint resolution to nullify the 2022 Rule. President Biden vetoed the joint resolution.
  - Twenty-six state attorneys general filed suit against the DOL alleging that the 2022 Rule violates ERISA.
  - In the first big ESG lawsuit filed against an employer since the 2022 Rule was finalized, American Airlines employees alleged that their retirement accounts were invested in underperforming funds because American Airlines improperly considered ESG factors in investment decisions.

What Are Your Next Steps?



- Your fiduciary duties have **not** changed. Select investment options with a sole focus on (1) analyzing risk-return on investments and (2) furthering participants' interests.
- While you are permitted to consider ESG factors in analyzing risk and return, there are no clear standards for how to define, evaluate or select between non-financial factors.
- Given the political warring over ESG, be aware that DOL guidance may continue to shift with changes in political administration.
- If you intend to consider ESG factors in administering your retirement plan's investment options, set out a process by which you will do so.
- The safest course of action may be to refrain from consideration of ESG factors until we know more about how fiduciaries' considerations of such factors will be received by participants and assessed by courts and the DOL.

Recurring Issues in Transactions: Controlled Group and Affiliated Service Group Rules

Why/When Do We Care?

- ERISA legal requirements are generally obligations of the common law employer. But the common law employer is not *just* the employer that directly controls/directs employees — it includes the entire "related" group.
  - Members of a related employer group are generally treated as a single employer for most ERISA purposes (e.g., testing, counting service, determining eligibility for distributions and loan limits).
  - Related employer rules exist to prevent an employer from offering more generous benefits to highly compensated employees by subdividing into more than one company.
- Related employer rules are consistently an issue for portfolio companies and companies that grow through acquisitions.

Related Employer Rules

- There are a variety of (extremely complicated) ways in which entities may become part of a related employer group. To determine your related employer status, you must consider your company's common ownership* and service/management relationships with other entities.
  - *Remember ownership attribution rules! Different attribution rules apply to different types of related employer groups.

Types of Related Employers	
Controlled Group	Affiliated Service Group
• Parent-subsidiary • Brother-sister	• A-organization • B-organization • Management

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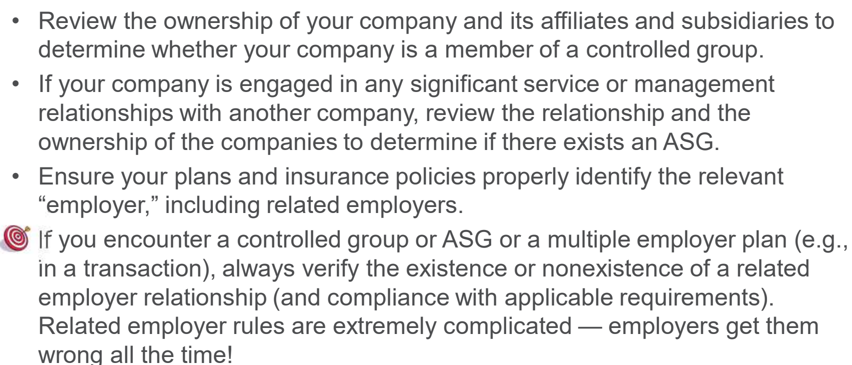
What Are Your Next Steps?



- Review the ownership of your company and its affiliates and subsidiaries to determine whether your company is a member of a controlled group.
- If your company is engaged in any significant service or management relationships with another company, review the relationship and the ownership of the companies to determine if there exists an ASG.
- Ensure your plans and insurance policies properly identify the relevant "employer," including related employers.
- If you encounter a controlled group or ASG or a multiple employer plan (e.g., in a transaction), always verify the existence or nonexistence of a related employer relationship (and compliance with applicable requirements). Related employer rules are extremely complicated — employers get them wrong all the time!

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Forfeiture Litigation

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What Is Forfeiture Litigation?

- Forfeitures in a qualified retirement plan are unallocated funds. When an employee terminates employment before they are fully vested in their employer contributions, the unvested contributions constitute forfeitures.
- Employers must use/allocate forfeitures by the end of the plan year following the plan year in which the forfeitures arose.
- Since about October 2023, four class action suits have been brought against employers on behalf of participants in each employer's 401(k) plan.
  - Employers: Thermo Fisher, Intuit, Qualcomm and Clorox
- Plaintiffs allege that plan fiduciaries violated their fiduciary duty of loyalty by using forfeitures to offset employers' contribution obligations (for "the company's own benefit") rather than using forfeitures to pay plan expenses (otherwise borne by participants) or reallocating forfeitures to participants.

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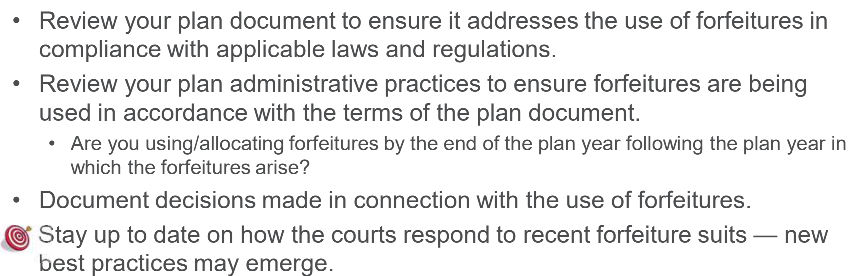
Low Likelihood of Success

- According to the Treasury Regulations, longstanding IRS and DOL guidance, and a Proposed Rule issued by the IRS in February 2023, forfeitures in a defined contribution plan can be used to:
  - Pay plan administrative expenses,
  - Reduce employer contributions under the plan, or
  - Increase benefits to participants' accounts in accordance with plan terms.
- The use of forfeitures should be addressed in the plan document. Making plan design decisions (e.g., how forfeitures will be handled in the plan document) is a settlor function that does not implicate fiduciary duties.
- So long as plan fiduciaries are using forfeitures in accordance with the terms of their plan document and in compliance with applicable laws and regulations, it is unlikely plaintiffs will be successful.

What Are Your Next Steps?



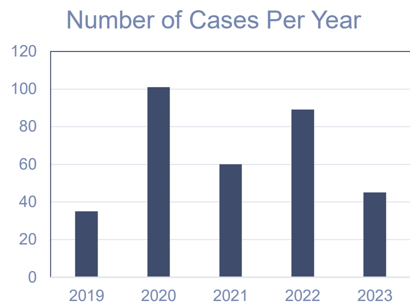
- Review your plan document to ensure it addresses the use of forfeitures in compliance with applicable laws and regulations.
- Review your plan administrative practices to ensure forfeitures are being used in accordance with the terms of the plan document.
  - Are you using/allocating forfeitures by the end of the plan year following the plan year in which the forfeitures arise?
- Document decisions made in connection with the use of forfeitures.
- Stay up to date on how the courts respond to recent forfeiture suits — new best practices may emerge.

Excessive Fee Litigation

What Is Excessive Fee Litigation?

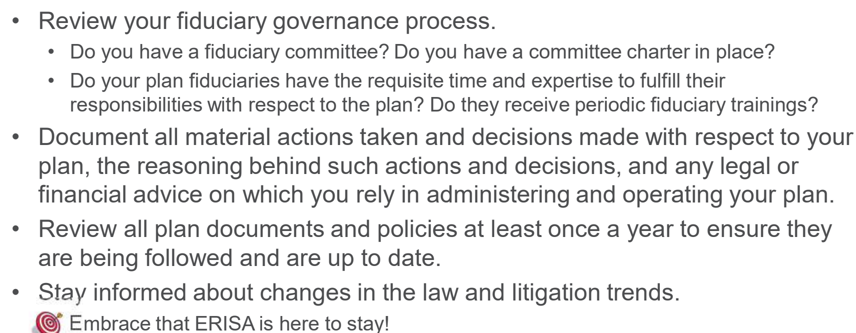
- As part of their fiduciary duty of prudence, ERISA plan fiduciaries must carefully select/monitor plan service providers and ensure that fees paid to such providers are reasonable given the services provided to the plan.
- Excessive fee suits are typically brought as class actions on behalf of all participants in an ERISA plan.
- Plaintiffs commonly allege that plan fiduciaries breached their fiduciary duties by, among other things, subjecting participants to excessive service provider fees and failing to monitor such fees.
- Historically, excessive fee suits have primarily been filed in connection with retirement plans, but excessive fee litigation is expected to increase in the context of health and welfare plans due to the recent increased federal regulatory attention to health care cost transparency.

Trends in Excessive Fee Litigation (Retirement Plans)



- Any plan, regardless of size, can be the subject of an excessive fee suit.
  - According to fiduciary insurance data, 40% of excessive fee suits filed in 2022 related to plans with less than $1 billion in assets and 20% related to plans with less than $500 million in assets.
- Historically, defendants' success at the motion to dismiss stage has been rare. Today, despite a maturing body of case law, it remains inconsistent.
  - Most settlements in 2022 ranged from $500,000 to $4 million, with the largest settlement totaling $32.5 million.

What Are Your Next Steps?



- Review your fiduciary governance process.
  - Do you have a fiduciary committee? Do you have a committee charter in place?
  - Do your plan fiduciaries have the requisite time and expertise to fulfill their responsibilities with respect to the plan? Do they receive periodic fiduciary trainings?
- Document all material actions taken and decisions made with respect to your plan, the reasoning behind such actions and decisions, and any legal or financial advice on which you rely in administering and operating your plan.
- Review all plan documents and policies at least once a year to ensure they are being followed and are up to date.
- Stay informed about changes in the law and litigation trends.
  - Embrace that ERISA is here to stay!

Honorable Mentions

- **DOL's proposed Retirement Security Rule.** For the fourth time since 2010, the DOL has proposed a new rule that would broaden the scope of who may be considered an investment advice fiduciary for purposes of ERISA. This rule is hotly contested and will likely be the subject of litigation in the near future.
- **DOL proposal to rescind association health plan rule.** A 2018 DOL rule made it easier for employers to form an association health plan (i.e., to be considered a single employer for health plan purposes). In 2019, a federal court concluded that the rule violates ERISA and the DOL has now proposed rescinding the rule entirely.
- **SECURE 2.0 changes to EPCRS.** SECURE 2.0 amendments to the Employee Plans Compliance Resolution System (and associated IRS guidance) have simplified and expanded employers' ability to self-correct plan administrative and operational errors.

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Heather Ryan is a seasoned employee benefits and executive compensation lawyer and chair of the firm's Employee Benefits & Executive Compensation Practice Group. She brings a unique perspective to the table, drawing on a decade of experience as in-house employee benefits and executive compensation counsel, as well as business roles in Total Rewards, at two publicly held, multibillion-dollar corporations. Heather's approach to helping clients solve problems and design new benefit and compensation plans is both pragmatic and proactive.

Heather counsels clients on all aspects of employee benefits including 401(k), 403(b), pension, cafeteria, health and welfare plans, and she has successfully handled many Department of Labor and IRS audits and correction submissions for clients. Heather enjoys working with clients on a broad range of issues, including fiduciary governance structure and processes, employer stock best practices, HIPAA, COBRA and wellness plans.

Heather has extensive experience advising on the benefits and compensation issues involved in corporate transactions, including equity compensation, change in control arrangements, severance and deferred compensation. She also assists clients on matters relating to executive employment agreements, short-term and long-term incentive compensation, and executive terminations. Heather also helps develop and draft compensation committee material for the board and advises on governance matters affecting such committees.

Practice Areas

Employee Benefits & Executive Compensation

Bar Admissions

North Carolina

Illinois

Education

Washington University in St. Louis, J.D., 2004; Associate Editor, Washington University Law Quarterly

Vanderbilt University, B.A., cum laude, 2000

Experience

- Advised on compliance issues relating to former company's employee benefits, compensation and equity plans, including benefits-related SEC disclosures, annual bonus plan and incentive plan issues and 409A deferred compensation issues, defined benefit and defined contribution plan strategies, plan mergers and terminations, ERISA claims procedures, Affordable Care Act, wellness programs, HIPAA privacy and security, and COBRA administration.
- Advised senior management on executive compensation and benefits, equity and incentive compensation, and HR-related merger and acquisition issues, including governance and regulatory developments.
- Served as lead HR merger and acquisition lawyer for telecommunications merger valued at almost $80 billion, including HR due diligence, executive compensation issues, 280G analysis and integration projects.
- Managed and developed strategy for executive benefit programs, including deferred compensation, SERPs, executive health, change in control arrangements and executive severance.
- Developed strategy and design of shareholder-approved global equity plan and drafted all required documentation, including committee and plan documentation and global award agreements (approximate $60 million annual grant value in 26 countries).
- Drafted executive employment agreements in partnership with executive compensation team, including certain C-suite contracts and other succession planning projects.
- Conducted RFP and negotiated contract and related materials with independent fiduciary for company stock fund.
- Reviewed and negotiated all service provider contracts and business associate agreements with third-party benefits administrators and vendors and monitored vendor compliance with such contracts and applicable plans.
- Served as chief legal counsel for former company's fiduciary committees (benefit administrative committee and investment committee) and pension assumption committee.
- Managed former company's ERISA litigation, including claims involving denial of retirement, health, life, disability and severance benefits; alleged breaches of fiduciary duty; the application of state law (federal preemption); and alleged misrepresentations regarding benefits.

Community Affiliations

- Arts+, Board Member, 2022

- Women Executives, Member
- McCallie School, Honor Fund Committee, 2022
- Providence Day School, Annual Fund Chair, 2016-18; Social Responsibility and Community Engagement Chair, 2021-22

Insights

- SECURE 2.0 Roth Catch-Up Requirement
  Robinson Bradshaw Publication
- Fiduciary Fundamentals: 401(k) Plan Excessive Fee Suits
  July 17, 2023
  Robinson Bradshaw Publication
- Fiduciary Fundamentals: The Basics
  March 28, 2023
  Robinson Bradshaw Publication
- SECURE 2.0 is Here: What You Need to Know Now
  Jan. 5, 2023
  Robinson Bradshaw Publication

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Elizabeth Smith is a corporate attorney whose practice focuses on employee benefits, executive compensation and corporate transactions.

Elizabeth works with clients to structure and maintain their tax-qualified retirement plans (including 401(k), 403(b) and pension plans) to support their employees' retirement planning goals. She also counsels clients on a broad range of issues related to cafeteria plans, health and welfare plans and wellness programs, including with regard to ERISA, HIPAA and ACA compliance. With respect to both retirement plans and health and welfare plans, Elizabeth advises clients on prudent fiduciary governance practices and negotiates clients' contracts with plan service providers.

In addition, Elizabeth represents individuals, startups, public and private companies, and private equity firms in a range of business transactions, including mergers and acquisitions and venture capital financings.

Experience

- Drafted amendments to and restatements of individually designed 401(k), pension, cafeteria and health and welfare plans and associated summary plan descriptions.
- Advised on legal compliance issues associated with company acquisitions and restructurings and plan mergers and terminations.

Practice Areas

Employee Benefits & Executive Compensation
Corporate & Commercial
Employment & Labor
Cybersecurity & Privacy

Bar Admissions

North Carolina

Education

Harvard Law School, J.D., 2021
Duke University, B.A., summa cum laude, 2018; Phi Beta Kappa

- Reviewed and negotiated service provider contracts and business associate agreements with third-party benefits vendors and insurance companies.
- Trained benefit plan fiduciaries on their plan structure, governance process, fiduciary duties and ERISA litigation trends.
- Advised benefit plan fiduciaries on their response to and implementation of new legislation, including the SECURE Act of 2019 and SECURE 2.0 Act of 2022.
- Developed practical strategies for employer self-correction of plan operational errors.
- Drafted and filed IRS Voluntary Correction Program submission on behalf of employee stock ownership plan.

Insights

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  Robinson Bradshaw Publication
- SECURE 2.0 is Here: What You Need to Know Now
  Jan. 5, 2023
  Robinson Bradshaw Publication

Honors & Awards

- North Carolina Pro Bono Honor Society, 2022