



Webinar 18 – September 25, 2024

ERISA Litigation Update

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INTRO/SETTING THE STAGE

What is ERISA?

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

ERISA is administered in part by the Employee Benefits Security Administration (EBSA), a branch of the U.S. Department of Labor.

- The law establishes requirements and guidelines for employers and benefit plan managers, trustees and certain other service providers.
- ERISA ensures minimum standards are set for the majority of private industry pension and health plans, as well as other benefit plans such as life insurance.
- Under ERISA, employees must be notified of benefit plan terms, including funding, coverage, and costs. Employees are also offered protections against fiduciary wrongdoing.
- Plan participants or the DOL may be able to sue plan fiduciaries if plans are mismanaged or if plan fiduciaries engage in conduct prohibited under ERISA, and plan participants may sue for unpaid benefits.

RECENT CASELAW

Supreme Court Activity Concerning the *Chevron* Doctrine

The Supreme Court recently heard a case pertaining to the *Chevron* doctrine—under which courts defer to an agency’s reasonable interpretation of its governing statute if the statute is ambiguous—that carry significant implications for ERISA plans.

The *Chevron* Doctrine:

- Since 1984, citation to *Chevron v. Natural Resources Defense Council* has meant that courts should defer to an agency's interpretations of an ambiguous statute—as long as the agency's interpretation is "reasonable," even if not the "best" in the court's view.
- This deference, known as *Chevron* deference, was a staple of regulatory law for 40 years until June 28, 2024, when the Supreme Court overturned *Chevron* in *Loper Bright v. Raimondo*.

Note:

It is unclear how overturning the Chevron doctrine will specifically impact legislative regulations. Because courts, and not agencies, will be the final arbiters of the law’s meaning, there may be somewhat more continuity in regulations when administrations change, but any division among the circuits as to a law’s meaning will add uncertainty.

The Effect of the Decision on Agency Interpretations and Opinions

In *Loper Bright v. Raimondo*, the Supreme Court overruled *Chevron* holding that the Administrative Procedure Act ("APA") requires the court or judicial branch to interpret the laws/the best reading of the statute and it is not the job of the governmental agency.

- Employee benefit plans are regulated by the IRS, DOL, and PBGC. These agencies issue opinion letters, private letter rulings, statutory regulations, and interpretative regulations, and they take enforcement actions.
- Many regulations issued by the agencies are interpretative regulations that are issued by agencies after compliance with the notice and review procedures of the Administrative Procedure Act. Under *Loper Bright*, a court will examine the agency's regulations to ensure that the agency engaged in "reasoned decisionmaking" in compliance with the APA, but even if it did so, its regulations are entitled to no special deference by the court.
- The *Loper Bright* decision does NOT affect the deference given to statutory regulations of agencies.

Implications of the Supreme Court's Holding

DOL's Retirement Security Final Fiduciary Rule

On April 23, 2024, the U.S. Department of Labor issued a final rule expanding the definition of an "investment advice fiduciary" with respect to employee benefit plans and IRAs for purposes of determining who is a "fiduciary" under ERISA.

The Final Rule imposed ERISA's fiduciary protections on many types of investment advisory relationships that were exempted under the DOL's previous regulatory definition of "investment advice fiduciary,"

Recently, two federal courts issued decisions to stay the September 23, 2024 implementation of the Department of Labor's final fiduciary rule.

In both cases, *Federation of Americans for Consumer Choice v. U.S. Department of Labor* and *American Council of Life Insurers v. U.S. Department of Labor* determined that the DOL's final fiduciary rule did not meet APA requirements and the DOL did not analyze enough impact data while conducting its cost-benefit analysis.

Use of Forfeitures

A new class action complaint filed in the Central District of California alleges that a national bank improperly used forfeited plan money. Previously, the IRS ruled that 401(k) plan forfeitures can be used to reduce future employer contributions.

The absence of *Chevron* deference may affect the courts' analyses in these cases if they find that regulations permitting such use of forfeitures are improper under the statute.

ERISA INVESTIGATION UPDATES: POTENTIAL AREAS OF FOCUS

Potential Areas of Focus in 2024 and Beyond

The DOL has reported its National Enforcement Projects. Those official priorities include the following:

- Protecting Benefits Distribution (focusing on distressed plan sponsors, abandoned plans, and housing the DOL's Terminated Vested Participant Project, which focuses on missing participants)
- Plan Investment Conflicts (focusing on issues related to compensation received by fiduciary service providers and on conflicts of interest)
- Health Enforcement (focusing on mental health parity and compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA), coverage of emergency services in compliance with the Affordable Care Act, fees charged by service providers, and fraudulent multiple employer welfare arrangement operators)
- Employee Stock Ownership Plans

EMPLOYER CHECKLIST FOR ERISA COMPLIANCE

1. Plan Documentation

Maintain written plan documents for all employee benefit plans subject to ERISA. Ensure plan documents contain essential information, such as plan eligibility criteria, benefits provided, funding mechanisms, and claims procedures.

2. Summary Plan Descriptions (SPDs):

Provide SPDs to plan participants, summarizing key plan terms and conditions in an understandable manner. Distribute SPDs to eligible employees within 90 days of enrollment in the plan and to new employees within 90 days of their eligibility to participate.

The SPD should include:

- Cost-sharing provisions (premium, deductible, co-insurance, etc.)
- List of covered preventative services
- List of covered existing and new drugs
- Covered medical tests, devices, and procedures
- In-network vs. out-of-network benefits
- Pre-authorization requirements

3. Fiduciary Responsibilities:

Identify and appoint fiduciaries responsible for managing and overseeing benefit plans. Prudently select and monitor service providers, such as plan administrators and investment managers, to ensure they act in the best interest of plan participants.

4. Reporting and Disclosure Requirements:

File Form 5500 annually with the Department of Labor (DOL) for each ERISA-covered plan. Provide participants with certain disclosures, including annual funding notices, summary annual reports, and notices of material modifications.

5. Participant Rights:

Communicate participants' rights under the plan, including the right to receive benefits, file claims and appeals, and access plan information. Establish procedures for handling claims and appeals in a timely and fair manner, consistent with ERISA guidelines.

6. COBRA Compliance:

Comply with the Consolidated Omnibus Budget Reconciliation Act (COBRA) requirements for offering continuation coverage to qualified beneficiaries upon certain qualifying events. Provide timely and accurate COBRA notices to eligible individuals, informing them of their rights to continue health coverage.

7. HIPAA Privacy and Security:

Protect the privacy and security of protected health information (PHI) in compliance with the Health Insurance Portability and Accountability Act (HIPAA). Implement safeguards to prevent unauthorized access to PHI and maintain confidentiality in accordance with HIPAA regulations.



It's important to familiarize yourself with the requirements under ERISA to remain compliant. Otherwise, employers may be subject to legal action, penalties, and lawsuits. When offering benefits plans, ensure ERISA compliance by following these tips.

Provide a physical copy of coverage

Employers need to receive a master copy of the coverage documents from the insurance carrier. This document should include named fiduciaries, allocation of responsibilities, benefit payment, claims procedures, portability, special enrollment and nondiscrimination provisions, and privacy of health information.

If the insurance carrier's documentation does not include any of these points, the employer must create a separate document which supplements what the carrier provides to include all of this information.

If there is a request by a participant to receive a copy, a return of the copied documents must occur within 30 days of the request. It is best to keep a record of these requests and the responses to them.

Supply a plan summary and updates

Once an employee becomes a participant in your plan, they should receive the Summary Plan Description (SPD). This allows the plan participant to review their benefits and rights.

Participants should also receive any updated changes to any of these plan details throughout its lifetime in a Summary of Material Modifications. All information that a participant receives should be easy to understand and follow.

Report on time

Employers are also required to submit annual 5500 reports to the DOL to report financial and other information about the plan. There are some group health plans that are generally exempt from this requirement including those with fewer than 100 participants, unfunded group health plans, or those sponsored by churches or the government.

Make investment options clear

If there are investment options within the plan, make participants fully aware of all choices before they invest. Plan participants should know the benefits and risks associated with the investment. Plan participants should always know where their money is going and when.