

10th Circuit Invalidates Plan's Arbitration Term

In the last several years, courts have grappled with ERISA plan terms that require participants to arbitrate their claims on an individual basis.¹ Recently, the 10th Circuit invalidated a plan's arbitration term in *Harrison v. Envision Management Holding* because it would have restricted the statutory ERISA remedies participants were otherwise entitled to seek.²

In *Harrison*, a former employee of Envision and participant in Envision's Employee Stock Ownership Plan ("ESOP") brought an action on behalf of the ESOP arguing plan fiduciaries breached their duties in connection with the ESOP's purchase of allegedly overvalued company stock. The participant sought plan-wide remedies including removal of the plan's trustee and restoration of losses to all participant accounts, not just his own. However, plan terms required individual arbitration and prohibited any relief that would benefit other plan participants. The arbitration term also included a non-severability clause—if one portion of the term was struck down, the entire provision would become invalid. In light of plan terms, Envision's board, the ESOP Committee, and the trustee asked the court to compel arbitration.

First the district court and then the Court of Appeals invalidated the arbitration term not because it disallowed class actions or required arbitration, but because it prohibited the participant from seeking remedies authorized by ERISA. Specifically, the Court of Appeals invoked the "effective vindication exception," a judicially-created rule based in public policy that invalidates an arbitration term which operates as a prospective waiver of a party's right to pursue statutory remedies. The court explained that ERISA authorizes participants to bring a civil action for certain statutorily-prescribed relief which the plan's arbitration provision would prohibit, and so the participant could not effectively vindicate his rights—that is, even if he could pursue losses to his own account, he would be foreclosed from seeking other forms of statutory relief, like removal of a trustee and restoration of all plan losses. The opinion also favorably cited a 2021 decision by the Seventh Circuit, *Smith v. Board of Directors of Triad Manufacturing, Inc.*, which similarly struck an arbitration provision because it restricted ERISA-authorized remedies.

The *Harrison* case is particularly noteworthy because the DOL submitted an amicus brief making clear its position that plan terms cannot limit a participant's statutory remedies, consistent with the 7th and Circuit's decision. The DOL's brief was also critical of the 9th Circuit's opinion in *Dorman v. Schwab*, stating the 9th Circuit misconstrued a Supreme Court decision. The DOL further distinguished *Dorman* because the arbitration provision at issue there did not appear to prohibit plan-wide relief.

This area of the law continues to evolve and it remains to be seen whether other circuits will agree with the 7th and 10th.

Not intended as legal advice

¹ See [our article](#) on the Ninth Circuit's 2019 decision in *Dorman v. Schwab*, in which the court upheld a plan's arbitration requirement.

² *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Directors*, 59 F.4th 1090 (10th Cir. 2023).