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EMPLOYEE BENEFITS LAW

Legal Developments Impacting Retirement Plans

2025 Year-End Update

1. In September 2025, the Internal Revenue Service (IRS) issued **final regulations regarding SECURE Act 2.0 catch-up contribution** rule changes.[1] The final regulations confirm that Plans may optionally enforce the increased catch-up contribution limit for participants age 60–63, as a matter of plan design. The final regulations provided further detailed guidance on new Roth catch-up contribution requirements for higher-income earners (FICA wages of $150,000 or more in 2025) beginning on January 1, 2026.

2. While plaintiffs' class action firms continue to challenge the common and longstanding 401(k) plan practice of **using forfeitures to reduce employer contributions**, several notable court decisions dismissed these types of claims.[2] Currently, several such lawsuits are on appeal before the Third, Eighth, and Ninth Circuits. The Department of Labor (DOL) filed an amicus brief in at least four of these cases supporting the Plan's use of forfeitures, and additional DOL amicus briefs in other lawsuits may be forthcoming.

3. In *Cunningham v. Cornell University*, the Supreme Court resolved a circuit split by holding that a plaintiff can **adequately allege a prohibited transaction by pleading the existence of an ERISA § 406 prohibited transaction**.[3] Whereas some courts had previously held that the complaint must also allege the *absence* of an applicable exception under ERISA § 408(b), *Cunningham* now permits suits to proceed to litigation discovery based solely on the allegation of a transaction between a plan and a "party in interest." Given the broad definition of prohibited transactions in § 406, the *Cunningham* Court accepted that this standard could lead to "an avalanche of meritless litigation" based on benign everyday transactions necessary to plan operation.

   Congress has introduced a **bill which would reverse the *Cunningham* decision** and require plaintiffs to show both the existence of a § 406 prohibited transaction and the absence of an applicable § 408 exemption to adequately plead a prohibited transaction claim.

4. In challenges to **plan recordkeeping and administrative (RKA) fees**, courts agree the reasonableness of such fees can be evaluated by comparing the fees one plan pays for RKA services against what other plans pay; however, federal courts are divided over how strictly to apply the comparison. The Second, Sixth, Eighth, and Tenth Circuits require the comparator plan to have purchased identical or nearly identical RKA services to the

[1] 90 Fed. Reg. 44,527 (Sept. 16, 2025).
[2] *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912 (N.D. Cal. 2025), *appeal filed* (Feb. 7, 2025).
[3] *Cunningham v. Cornell University*, 604 U.S. 693 (2025).

challenged plan.[4] The Third, Fifth, and Ninth Circuits instead have viewed all RKA services are essentially interchangeable, generally viewing RKA fee comparisons as an apples-to-apples cost analysis.[5]

5. ERISA protects a retirement plan's fiduciaries where a participant's investments are directed into a **Qualified Default Investment Alternative (QDIA)** absent an affirmative investment election by the participant. A recent DOL Advisory Opinion found an investment which included an insured lifetime income stream satisfied the definition of QDIA. This is notable, as the DOL restricts the types of investments that can qualify as a QDIA, such that it was previously unclear whether a QDIA could include a guaranteed lifetime income stream.

6. Federal courts are divided over plans' use of the **"Segal Blend" interest rate for calculating withdrawal liability** from multiemployer pension plans. Although the Segal Blend rate differed from the plan's interest rate assumption for minimum funding purposes, a federal district court in Illinois approved the Segal Blend rate based on the actuary's methodology to establish that this rate constituted its "best estimate" of the plan's anticipated experience.[6] This decision, which is on appeal to the Seventh Circuit, conflicts with a 2021 Sixth Circuit ruling prohibiting a Plan's use of the Segal Blend.[7] While not specifically addressing the Segal Blend, other federal circuits permit some difference between a plan's interest rate for minimum funding purposes and its withdrawal liability assumption.[8]

7. Courts have applied inconsistent scrutiny to environmental, social, and governance (ESG) investment practices. In *Spence v. American Airlines*, the court held that fiduciaries for **American Airlines' 401(k) plans breached their duty of loyalty—**but not the duty of prudence—by retaining BlackRock index and target date funds that incorporated ESG-proxy voting policies and activism.[9] Although the funds had "low fees and at least comparable returns" and were carefully selected in regular and "robust" reviews by qualified investment experts, the court nonetheless found the fiduciaries had an "incestuous" and conflicted relationship with BlackRock—which held $400 million in American Airlines' private debt, was American Airlines' largest shareholder, and was "aligned" with the company's own ESG objectives—which, the court concluded, led them to turn a "blind eye" toward BlackRock's ESG practices.

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[4] *England v. DENSO International America Inc.*, 136 F. 4th 632 (6th Cir. 2025); *Singh v. Deloitte LLP*, 123 F. 4th 88 (2d Cir. 2024); *Matney v. Barrick Gold of North America*, 80 F. 4th 1136 (10th Cir. 2023); *Matousek v. MidAmerican Energy Co.*, 51 F. 4th 275 (8th Cir. 2022).
[5] *Mator v. Wesco Distribution, Inc.*, 102 F. 4th 172 (3d Cir. 2024); *Perkins v. United Surgical Partners International, Inc.*, No. 23-10375, 2024 WL 1574342 (5th Cir. Apr. 11, 2024); *Kong v. Trader Joe's Co.*, No. 20-56415, 2022 WL 1125667 (9th Cir. Apr. 15, 2022).
[6] *Central States, SE & SW Areas Pension Fund v. Allied Aviation Fueling Co.*, No. 21-CV-2821, 2025 WL 2524492 (N.D. Ill. Sept. 2, 2025), *appeal filed* (Oct. 3, 2025).
[7] *Sofco Erectors, Inc. v. Trustees of Ohio Operating Engineers Pension Fund*, 15 F. 4th 407 (6th Cir. 2021).
[8] *United Mine Workers of America 1974 Pension Plan v. Energy West Mining Co.*, 39 F. 4th 730 (D.C. Cir. 2022).
[9] *Spence v. American Airlines, Inc*., 775 F. Supp. 3d 963 (N.D. Tex. 2025).

In September, the *Spence* court found that the American Airlines' fiduciaries' breach of the duty of loyalty **resulted in no losses to plan participants,** thereby awarding no damages and instead issuing an injunction requiring further monitoring. Plaintiffs' request for an award of approximately $8 million in attorney's fees remains pending. While further proceedings and a potential appeal may affect the results in this unique case, plan fiduciaries are well advised to maintain the type of "robust" review practices that the *Spence* court found to satisfy the duty of prudence, and to take precautions to avoid potential conflicts of interest.

Meanwhile, in March, another Texas federal district court upheld a DOL regulation under which **ESG factors remain a permissible "tiebreaker"** between financially equivalent investment options. The court held the DOL regulation complied with ERISA because it "never permits fiduciaries to deviate from exclusively achieving financial benefits" for plan participants.[10]

8. In a 2019 decision, the Ninth Circuit held that ERISA plan terms can require **individual arbitration** of participant claims, but other circuits since then have clarified that such provisions cannot restrict a participant from seeking statutorily available, plan-wide relief (like removal of a trustee or restoration of plan-wide losses). This year, the Ninth Circuit agreed, likely signaling the end of individual arbitration requirements in plan terms.[11] See our article for more information.

9. **Changes to DOL's Voluntary Fiduciary Correction Program (VFCP)** became effective in March 2025, including the addition of a Self-Correction Component (SCC), which may be used in lieu of a full VFCP application to correct certain fiduciary breaches. SCC is available for certain delinquent transmittals of participant contributions and loan repayments to pension plans, plus for eligible inadvertent participant loan failures that can be self-corrected under the IRS's Employee Plans Compliance Resolution System. While the DOL states it does not plan to take enforcement action against plans that correctly use the SCC process, it will monitor use of the SCC for repeat self-correctors.

10. The DOL announced a **temporary non-enforcement policy under which it will not act against plans that transfer small (under $1,000) accounts** of missing individuals to state unclaimed property funds, if certain criteria are satisfied. The policy may be of limited utility given that plans must first search for the missing individuals using the DOL's best practices and determine it is prudent to transfer benefits, without any bright-line standard to determine if those requirements have been met.

11. The IRS announced the following **compensation and benefits limits for 2026**:

    - The maximum elective deferral to a 401(k) or 403(b) plan increased to $24,500, with annual limit catch-up contributions for participants over age 50 increasing from $7,500 to $8,000;

[10] *Utah v. Micone*, 766 F. Supp. 3d 669 (N.D. Tex. 2025).
[11] *Platt v. Sodexo, S.A.*, 148 F. 4th 709 (9th Cir. 2025).

- The maximum compensation that can be considered under a qualified retirement plan increased from $350,000 to $360,000; and
- The threshold for determining who is a highly compensated employee in 2025 is $160,000 (for compensation earned in 2024). The IRS has maintained this $160,000 threshold for 2026 (for compensation earned in 2025).[12]

From all of us here at MMPL, your employee benefits law firm.

Not intended as legal advice.

[12] IRS Notice 2025-67.