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EMPLOYEE BENEFITS LAW

Update: Arbitration in ERISA Plans

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Six years ago, the Ninth Circuit Court of Appeals held ERISA plan terms can limit participants to bringing claims only in arbitration, and on an individual (i.e., non-representative or class action) basis.[1] In an oft-criticized opinion, the court also appeared to hold that participants can seek monetary relief only to the extent impacting their own account, foreclosing individuals from obtaining plan-wide recoveries.[2] See our 2019 article for more information.

Since then, every other circuit court that has considered this question (the 2nd, 3rd, 6th, 10th, and 11th) has struck down, in part or all, plan arbitration provisions that restrict a participant from seeking statutorily available, plan-wide relief, such as removal of a plan trustee or restoration of plan-wide losses.[3] In so holding, these circuits relied on the "effective vindication" doctrine, under which arbitration provisions that act as a prospective waiver of a party's right to pursue federal statutory rights are unenforceable. Specifically, because ERISA Section 502(a)(2) allows participants to pursue relief under ERISA Section 409, which includes restoration of losses *to the plan* and other equitable or remedial relief including removal of a fiduciary, an arbitration term cannot stand if it would restrict a participant from seeking such relief. Notably, the arbitration terms at issue in many of these cases contained a non-severability clause, and so because the limitation on remedies was held unenforceable, so too was the overall requirement that claims be arbitrated.

In 2025, the Ninth Circuit revisited ERISA arbitration and specifically addressed the effective vindication doctrine in *Platt v. Sodexo*.[4] In so doing, it agreed with the other circuits that plan terms cannot preclude statutorily-available remedies. The court did not address its prior, arguably conflicting decision in *Dorman*; however, *Dorman* might be viewed as distinguishable since the arbitration provision at issue there did not appear to contain any term precluding plan-wide relief.[5]

The *Platt* decision may sound the death knell for arbitration terms in ERISA plans. Given a single arbitration decision could have plan-wide impact, plan sponsors may prefer litigating ERISA matters in court where decisions can be appealed and judges may have more experience with ERISA than arbitrators.

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[1] *Dorman v. Charles Schwab Corp*., 934 F.3d 1107 (9th Cir. 2019).
[2] *Dorman v. Charles Schwab Corp*., No. 18-15281, 2019 WL 3939644 (9th Cir. Aug. 20, 2019) (unpublished). Several circuits, as well as the DOL in an amicus brief, criticized *Dorman*'s conclusion that participants in a defined contribution plan can only bring claims for losses within their own account. *See* Brief of the U.S. Secretary of Labor as Amicus Curiae Supporting Plaintiff-Appellee, *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Directors*, 59 F.4th 1090 (10th Cir. 2023), 11 n.1.
[3] *Williams v. Shapiro*, No. 24-11192, 2025 WL 3625999 (11th Cir. 2025); *Parker v. Tenneco, Inc.*, 114 F.4th 786 (6th Cir. 2024); *Cedeno v. Sasson*, 100 F.4th 386 (2d Cir. 2024); *Henry on behalf of BSC Ventures Holdings, Inc. Emp. Stock Ownership Plan v. Wilmington Tr. NA*, 72 F.4th 499 (3d Cir. 2023); *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Directors*, 59 F.4th 1090 (10th Cir. 2023); *Smith v. Bd. of Directors of Triad Mfg., Inc.*, 13 F.4th 613 (7th Cir. 2021). As of the date of this bulletin, petitions for certiorari to the Supreme Court were filed in several of these cases and all were denied.
[4] *Platt v. Sodexo, S.A.*, 148 F.4th 709 (9th Cir. 2025).
[5] *See, e.g.*, *Smith*, 13 F.4th at 623.