

Legal Developments Impacting Retirement Plans

2023 Year-End Update

1. Federal courts are conflicted on the elements necessary to prove that **ERISA plan fees** paid to a service provider are a prohibited transaction. Recent decisions from the Second and Ninth Circuits added to the circuit split, increasing the likelihood the Supreme Court will weigh in.¹ Regardless, plan fiduciaries can protect themselves by regularly arranging for an independent fiduciary to review service providers' fees and indirect compensation to ensure they are reasonable compared to the fees paid by similar plans for similar services.
2. Since 1975, DOL regulations defined when a person was an **investment-advice fiduciary**. Beginning in 2010, the DOL made several unsuccessful attempts to expand this definition, with the most recent regulatory attempt vacated by the Fifth Circuit. The DOL proposed a new definition in November 2023, and asked for comment. Until a new definition is finalized, care should be taken when promoting certain ERISA plan investments or recommending a rollover from an ERISA plan to an IRA.
3. Complaints in several participant lawsuits allege that if a plan gives an employer discretion to use **forfeitures** to reduce plan expenses or offset its future contribution obligation, the employer violates ERISA when it decides to offset its contribution obligation. This conflicts with a longstanding IRS position, standardized plan terms, and recent proposed regulations. See our bulletin for further information.
4. Several pieces of guidance this year clarify provisions in the **SECURE 2.0 Act of 2022**, including its changes to required minimum distributions, auto enrollment, and Roth contributions. See our bulletin for a summary of key items.
5. The IRS announced compensation and **benefits limits for 2024** as follows:
 - a. The maximum elective deferral to a 401(k) or 403(b) plan increased to \$23,000, with annual limit catch-up contributions for over-age 50 participants remaining at \$7,500.
 - b. The maximum compensation that can be considered under a qualified retirement plan increased to \$345,000.
 - c. The threshold for determining who is a highly compensated employee (HCE) in 2024 is \$150,000 (compensation earned in 2023). For determining who is an HCE in 2025, the threshold will be \$155,000 (compensation earned in 2024).

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

Not intended as legal advice.

¹ *Cunningham v. Cornell University*, 86 F.4th 961 (2d Cir. 2023); *Bugielski v. AT&T Services, Inc.*, 76 F.4th 894 (9th Cir. 2023).