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An Update on ERISA 401(k) Plan Forfeiture Litigation

This update discusses arguments that district courts have found compelling in dismissing these cases, as well as recommendations for plan sponsors and fiduciaries to manage litigation risk.

Over the last eighteen months, class action lawsuits challenging the use of ERISA 401(k) plan forfeitures to offset employer contributions have proliferated in the federal courts. Although this use of forfeitures is a longstanding practice recognized by the U.S. Department of Treasury, a handful of favorable district court decisions allowing such claims to proceed to discovery have apparently emboldened plaintiffs to challenge this practice. Fortunately for defendants, recent cases have suggested a growing skepticism of this theory, with most district courts granting motions to dismiss. A few of these decisions are now pending review in the Third, Eighth, and Ninth Circuit Courts of Appeals.

In this update, we provide an overview of arguments that district courts have found compelling in dismissing these cases, as well as recommendations for plan sponsors and fiduciaries to manage litigation risk.

Background on ERISA Plan Forfeitures

The forfeitures in the crosshairs in these lawsuits are unvested employer contributions to plan accounts that are forfeited by the employee participant when the employee separates from the company before becoming fully vested in the funds. To illustrate, an employer might commit to matching its employees' 401(k) contributions up to 4% of covered compensation, while requiring

that the employees complete three years of service before the contributions vest. If an employee leaves her job before completing three years of service, she would forfeit these matching funds. Plan terms may spell out how such forfeited funds are to be used, typically for paying plan expenses, offsetting future employer contributions, or increasing benefits to other participants' accounts. Plan sponsors may also include plan language specifying that forfeitures be used for only one of these purposes.

Forfeiture lawsuits generally allege that the use of forfeitures to offset future employer contributions—rather than to pay plan expenses otherwise borne by plan participants or to reallocate to other eligible plan participants—prioritizes the plan sponsor's financial interests over those of plan participants and therefore violates ERISA. Specifically, plaintiffs allege that this practice (1) violates fiduciary duties of loyalty and prudence owed to the plan; (2) violates ERISA's anti-inurement provision; and (3) constitutes a prohibited transaction under ERISA.

As we reported previously, early decisions were split on the viability of plaintiffs' theory. However, over the last year, an increasing number of courts have rejected these cases at the motion-to-dismiss stage. In fact, of twenty-eight recently filed suits, courts have granted defendants' motions to dismiss in twenty-four of them. And fourteen of these twenty-four suits were dismissed partially or entirely without leave to amend. While these dismissals are welcome news for plan sponsors, these cases are still in their infancy, and a few are currently on appeal. Until the circuit courts weigh in, the threat of litigation still looms.

The Key Arguments for Defendants in Refuting Plaintiffs' Forfeiture Claims

As noted above, to date, most forfeiture cases have failed at the pleadings stage. Defendants have made an array of jurisdictional and merits arguments in motions to dismiss challenging plaintiffs' theories. While factual differences between plan terms have influenced the outcome of several cases, certain merits arguments have consistently gained traction in the courts.

Plaintiffs' Central Theory of Fiduciary Breach Is Often Deemed Overbroad

Plaintiffs' foundational argument is that employers breach fiduciary duties when they use forfeited funds to offset company contributions rather than pay plan expenses otherwise paid by plan participants. Such a move, plaintiffs argue, necessarily amounts to a breach of the duties of prudence and loyalty owed by plan fiduciaries under ERISA.

While a few courts have accepted this theory, the bulk have not, finding that the claims are overbroad and insufficient under Federal Rule 12(b)(6). Courts reason that ERISA does not require fiduciaries to "maximize pecuniary benefits" or "resolve every issue of interpretation in favor of plan beneficiaries."[1] These decisions often note that defendants' actions were permitted by—or even required by—the terms of their plan documents. As an example, a district court judge, confronted with a plan that explicitly allowed its sponsor "to use forfeited funds as company contributions or administrative expenses," stressed that plaintiffs were essentially asking the court to read a new benefit into their plan's own terms: "paying [p]laintiffs' administrative costs."[2] Framing that interpretation as "impermissibl[e]," the judge went on to dismiss plaintiffs' breach of fiduciary duty claim.

Some judges also point out that the use of forfeitures to offset company contributions (where permitted by plan terms) is recognized under a Treasury Department regulation in the defined benefit context, as well as under proposed regulations in the defined contribution context.[3]

Accordingly, district courts are increasingly rejecting plaintiffs' arguments that defendants should be categorically precluded from taking an action that the plan itself permits. As one district court noted, plaintiffs must "plead something more than an ordinary use of forfeited funds to pay future employer contributions, or in other words, behavior that is not consistent with the practices of perhaps all 401(k) plan fiduciaries."[4]

District Courts Are Not Buying Plaintiffs' Prohibited Transaction and Anti-Inurement Claims

Plaintiffs' class action complaints also typically allege that using forfeitures to offset company contributions violates both ERISA's anti-inurement and prohibited transactions provisions. Regarding the anti-inurement provision, plaintiffs claim that the use of forfeitures to offset company contributions effectively "inures" plan assets to the benefit of the employer, rather than the plan participants. Additionally, plaintiffs argue that this practice constitutes a prohibited transaction because it amounts to self-dealing by reducing the contributions an employer must make to that plan.

Neither argument has been particularly persuasive to the courts. Only two of the earliest motion to dismiss opinions permitted prohibited transaction and anti-inurement claims to proceed: *Qualcomm* and *Intuit*.[5] Most district courts to address these claims have dismissed them. Courts emphasize that to state a claim for violation of the anti-inurement provision, plaintiffs must allege that plan assets reverted back to the plan sponsor.[6] However, forfeited funds remain in the plan when used to offset company contributions and thus plaintiffs cannot allege that any plan assets reverted back to the plan sponsor.[7] The fact that plan sponsors benefit "through the reduction in [their] matching contributions does not make the use of forfeited amounts in this way a violation of the anti-inurement provision."[8]

As for prohibited transaction claims, district courts consistently hold that the reallocation of forfeited funds within a plan—including to offset company contributions—does not constitute a "transaction" as that term is used in Sections 406(a) or 406(b) of ERISA. The transactions prohibited by these provisions are typically "commercial bargains that present a special risk of plan underfunding," for example credit extensions, not simply a reallocation of funds within a plan between purposes.[9] Thus, these claims also fail.[10]

Forfeiture Cases Pending Appeal

Although most district courts presented with 401(k) forfeiture claims are now disposing of them on motions to dismiss, courts of appeal have yet to address the matter. Multiple dismissal decisions are pending on appeal, however, with appellate briefing complete in one case and underway in five others—actions that cumulatively touch the Third, Eighth, and Ninth Circuits.[11] Opinions issued in these cases in the coming months will likely influence the direction of future district court decisions and—if favorable to defendants—could substantially narrow the opportunities for viable 401(k) forfeiture lawsuits.

Future Considerations for Plan Sponsors and Fiduciaries

These cases are facing significant headwinds, which may make them less appealing for plaintiffs. Nevertheless, with some cases still allowed to proceed to discovery, and no appellate decisions yet issued in this space, the law remains to be fully written. For now, sponsors and fiduciaries should anticipate more cases on the horizon.

While this wave of litigation continues, sponsors may want to consider reviewing their plan documents to assess whether their uses of forfeitures comply with IRS guidance and proposed Treasury Department regulations, as well as with the terms of their plans.[12] Fiduciaries may also consider documenting any decision-making related to their use of forfeitures, including detailing their compliance with plan terms. They may also review participant communications, such as the summary plan description, to assess how forfeiture allocations are explained to plan participants.

[1] *Wright v. JPMorgan Chase & Co.*, 2025 WL 1683642, at *5 (C.D. Cal. June 13, 2025) (quoting *Wright v. Oregon Metallurgical Corp.*, 360 F.3d 1090, 1100 (9th Cir. 2004)).

[2] *Middleton v. Amentum Parent Holdings, LLC*, 2025 WL 2229959, at *14-15 (D. Kan. Aug. 5, 2025).

[3] *Polanco v. WPP Group USA, Inc.*, 2025 WL 3003060, at *4-5 (S.D.N.Y. Oct. 27, 2025) (quoting 26 C.F.R. § 1.401-7(a)); *Hutchins v. HP Inc.*, 737 F. Supp. 3d 851, 863-64 (N.D. Cal. 2024).

[4] *McWashington v. Nordstrom, Inc.*, 2025 WL 1736765, at *14 (W.D. Wash. June 23, 2025).

[5] *Perez-Cruet v. Qualcomm Inc.*, 2024 WL 2702207, at *3-7 (S.D. Cal. May 24, 2024), *reconsideration denied*, 2024 WL 3798391 (S.D. Cal. Aug. 12, 2024); *Rodriguez v. Intuit Inc.*, 744 F. Supp. 3d 935, 946-49 (N.D. Cal. 2024).

[6] *E.g., Hutchins*, 737 F. Supp. 3d at 865-66 (N.D. Cal. 2024).

[7] *See e.g.*, *Fumich v. Novo Nordisk Inc.*, 2025 WL 2399134, at *8 (D.N.J. Aug. 19, 2025); *Barragan v. Honeywell Int'l Inc.*, 2024 WL 5165330, at *5-6 (D.N.J. Dec. 19, 2024); *Hutchins*, 737 F. Supp. 3d at 868 (N.D. Cal. 2024) (same); *Dimou v. Thermo Fisher Scientific Inc.*, 2024 WL 4508450 at *10 (S.D. Cal. Sept. 19, 2024) (same).

[8] *Hutchins*, 737 F. Supp. 3d at 866 (N.D. Cal. 2024).

[9] *Barragan*, 2024 WL 5165330, at *7 (D.N.J. Dec. 19, 2024) (internal citation omitted).

[10] *Sievert v. Knight-Swift Transportation Holdings, Inc.*, 780 F. Supp. 3d 870, 880 (D. Ariz. 2025); *Barragan*, 2024 WL 5165330, at *7 (dismissing prohibited transaction claim because "the allegations demonstrate that the forfeited amounts remain as Plan assets and are reallocated to other Plan participants"); *Hutchins*, 737 F. Supp. 3d at 868 (same); *Dimou*, 2024 WL 4508450 at *11 (same).

[11] *Hutchins*, 767 F. Supp. 3d 912 (N.D. Cal. 2025), *appellate briefing completed*, No. 25-826

(9th Cir.); *JPMorgan Chase*, 2025 WL 1683642 (C.D. Cal. June 13, 2025), *briefing underway*, No. 25-4235 (9th Cir.); *McWashington*, 2025 WL 1736765 (W.D. Wash. June 23, 2025), *briefing underway*, No. 25-4613 (9th Cir.); *Barragan*, 2025 WL 2383652 (D.N.J. Aug. 18, 2025), *briefing underway*, No. 25-2609 (3d. Cir.); *Cain v. Siemens Corp*, 2025 WL 2172684 (D.N.J. July 31, 2025), *briefing underway*, No. 25-2564 (3d. Cir.); *Matula v. Wells Fargo & Co.*, 2025 WL 1707878 (D. Minn. June 18, 2025), *briefing underway*, No. 25-2441 (8th Cir.).

[12] Use of Forfeitures in Qualified Retirement Plans, 88 FR 12282-01.

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