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Second Quarter 2026 ERISA Litigation Update: Recent Developments and Areas to Watch

Gibson Dunn's ERISA litigation update summarizes key legal opinions and developments during the past quarter to assist plan sponsors and administrators in navigating the rapidly changing ERISA litigation landscape.

Introduction

A dedicated plaintiffs' bar continues to test the boundaries of ERISA liability, while courts continue to define the substantive and procedural limits of those theories. During the second quarter of 2026, litigation expanded into new areas of employer-sponsored health and retirement plans, even as appellate courts issued important decisions clarifying the scope of ERISA's statutory requirements and remedial framework. The Department of Labor also signaled a change in its enforcement approach that may shape future litigation and fiduciary decision-making.

This quarterly update highlights key developments from the second quarter of 2026. It discusses emerging fiduciary challenges to employer-sponsored health plan design; developments in 401(k) forfeiture litigation as those cases reach the courts of appeals; recent appellate developments addressing withdrawal liability, actuarial equivalence, and the scope of equitable relief; and policy developments reflecting the Department of Labor's evolving enforcement priorities.

I. Recent Litigation Activity

A. Emerging Challenges to Employer Health Plan Design

Plaintiffs continue to test whether ERISA fiduciary duties can be used to challenge not only retirement plan investment menus, but also the design and administration of employer-sponsored health plans. One recent development is litigation challenging allegedly "financially dominated" health plan options—options that plaintiffs contend cost participants more than alternatives without providing commensurate financial or medical value.

In *Barbich v. Northwestern University*, No. 25-cv-6849, 2026 WL 1552506 (N.D. Ill. Apr. 2, 2026), participants in Northwestern University's employee welfare plan alleged that Northwestern breached ERISA fiduciary duties by offering a low-deductible, higher-premium PPO option that was allegedly financially dominated by a higher-deductible, lower-premium PPO option. *Id.* at *1. Plaintiffs asserted that the higher-premium option provided no meaningful financial or medical benefit once premiums, deductibles, coinsurance, and out-of-pocket maximums were considered, and that Northwestern failed to disclose to participants that alleged "domination" when the value of the plan options was compared. *Id*.

The district court denied Northwestern's motion to dismiss. On standing, it held that plaintiffs adequately alleged a concrete economic injury by pleading that they overpaid for coverage through payroll deductions, rejecting the argument that plaintiffs suffered no injury because they fully received the benefits the plan promised. *Id.* at *2–*3. The court also declined to dismiss on the ground that the challenged conduct involved settlor rather than fiduciary functions, finding that plaintiffs plausibly alleged fiduciary conduct—" (1) selecting the specific options for employees to enroll in, and (2) exercising a duty to monitor the settlor decisions"—and that a determination of whether conduct was settlor versus fiduciary in nature was fact-intensive and better suited to a later stage of the litigation. *Id.* at *3–*4. On the merits, the court allowed the prudence and disclosure claims to proceed, relying in part on allegations that Northwestern knew, after consulting actuaries, that participants were unlikely to be better off in the higher-premium option. *Id.* at *4–*5.

The theory—invoking ERISA fiduciary duties to challenge purportedly identical but more costly health plan options—appears to be spreading. In June 2026, a participant in the Abbott Laboratories Health Care Plan filed a similar putative class action alleging that Abbott breached ERISA fiduciary duties by offering a traditional PPO option that allegedly cost more than a high-deductible health plan option at every level of medical utilization. *Ebarle v. Abbott Laboratories*, No. 1:26-cv-06834 (N.D. Ill. filed June 10, 2026). The complaint expressly relies on *Barbich* and alleges that Abbott's plan fiduciaries failed to eliminate, redesign, or reprice the allegedly dominated option. *Id.* Other, similar cases have been filed, including a pre-*Barbich* case against the University of Rochester.[1]

Why this matters: Barbich is only a pleading-stage decision and did not resolve whether plaintiffs' economic theory is correct or whether the challenged conduct was fiduciary in nature. But together with the *Ebarle* complaint, it suggests that plaintiffs may increasingly seek to import retirement-plan investment fund menu-monitoring theories into the health-plan context. Plan sponsors should expect continued scrutiny of how health plan options are selected, documented, and described to participants, particularly where a higher-cost option can be alleged to provide no

offsetting participant benefit.

B. 401(k) Forfeiture Litigation Enters the Appellate Phase

As discussed in our February 2026 update, plaintiffs have filed dozens of class actions challenging the use of forfeited 401(k) funds to offset employer contributions rather than to pay plan expenses or to reallocate amounts to participant accounts, alleging violations of ERISA's duties of prudence and loyalty and its anti-inurement and prohibited-transaction provisions. Although a number of district courts have rejected these claims at the pleading stage, several dismissals are now on appeal.

The second quarter brought the first appellate decision in this wave of cases. In *Matula v. Wells Fargo & Co.*, 175 F.4th 958 (8th Cir. 2026), the plaintiff challenged Wells Fargo's use of forfeited employer matching contributions to offset future employer contributions rather than to pay plan expenses or make corrective adjustments to participant accounts. The Eighth Circuit did not reach the merits, instead affirming the dismissal for lack of Article III standing—though remanding for the dismissal to be entered without prejudice—based on the plaintiff's failure to plead a concrete, particularized injury traceable to the use of forfeitures. *Id.* at 961–62. The panel noted that, at oral argument, plaintiff's counsel acknowledged that the complaint alleged only plan-level harm and no injury to his own account. *Id.* At the same time, the panel faulted the district court for resolving disputed plan-interpretation questions at the pleading stage rather than assessing standing on the allegations in the complaint. *Id.* at 962.

Although *Matula* is a standing decision rather than a merits ruling, it is significant as the first appellate decision in the current forfeiture wave, and it reinforces a broader theme in ERISA litigation: even where plaintiffs invoke plan-wide remedies under ERISA § 502(a)(2), Article III requires a concrete injury to the named plaintiff. Other forfeiture appeals remain pending in the Third, Fourth, and Ninth Circuits.[2] The Department of Labor has filed amicus briefs in several of those appeals, supporting plan sponsors and arguing that the use of forfeitures to offset employer contributions, without more, does not violate ERISA when permitted by plan terms.[3]

What to watch: The first wave of appellate decisions will likely determine whether forfeiture litigation remains a district-court pleading-stage phenomenon or becomes a more durable source of ERISA exposure. If other courts of appeals follow *Matula*'s standing-focused approach or affirm dismissals on the merits, plaintiffs may face growing difficulty advancing these claims. But an appellate decision allowing a forfeiture claim to proceed could encourage further filings and sharpen focus on plan language and forfeiture procedures.

II. Significant Appellate Developments

Recent appellate developments continue to shape both substantive ERISA doctrine and procedural aspects of ERISA litigation. In addition, the Supreme Court has agreed to consider in the upcoming term whether an ERISA plaintiff alleging fund underperformance must plead a "meaningful benchmark" to state a claim. *Anderson v. Intel Corp. Investment Policy Committee*, No. 25-498 (argument scheduled for October 6, 2026).

A. Supreme Court Clarifies Timing Rules for Withdrawal Liability Assumptions

The Supreme Court issued an important ERISA decision in the second quarter addressing the actuarial assumptions used to calculate withdrawal liability owed by employers that cease contributions to underfunded multiemployer pension plans. On May 21, 2026, in *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, 146 S. Ct. 1224, 1230–31 (2026), the Court unanimously held that ERISA does not require multiemployer pension plans to calculate withdrawal liability using only actuarial assumptions adopted on or before the statutory measurement date.

Withdrawal liability is generally calculated "as of" the last day of the plan year preceding withdrawal. The employers in *M & K* argued that this language required the plan to use only the actuarial assumptions in effect on that measurement date. *Id.* at 1229. The dispute arose when the Fund adopted a lower discount rate after the measurement date and applied it to employers that withdrew the following plan year—materially increasing the assessed liability, since a lower discount rate raises the present value of plan liabilities. *Id.* Below, the D.C. Circuit had affirmed the district courts and held that actuaries could select assumptions after the measurement date, so long as those assumptions were "'based on the body of knowledge available up to the measurement date.'" *Id.* at 1229–30. The Supreme Court granted certiorari to resolve a split with the Second Circuit, which had held that interest-rate assumptions for withdrawal liability purposes must be adopted no later than the measurement date. *Id.*

The Supreme Court rejected the employers' timing argument and affirmed the D.C. Circuit. Writing for a unanimous Court, Justice Jackson reasoned that ERISA's measurement-date language fixes the date for valuing plan assets and other historical plan data but does not impose a deadline for selecting the actuarial assumptions used to perform the calculation—assumptions being predictive judgments about the plan's future experience rather than "facts" fixed as of the measurement date. *Id.* at 1230–31. The Court relied on 29 U.S.C. § 1393, which requires that actuarial assumptions and methods, in the aggregate, be reasonable and reflect the actuary's best estimate of anticipated plan experience but contains no timing requirement. *Id.* The Court contrasted that provision with 29 U.S.C. § 1399(c)(1)(A)(ii), in which Congress expressly referred to assumptions used for the "most recent actuarial valuation," showing that Congress knew how to impose timing limits when it wished to do so. *Id.* at 1231–32. The Court emphasized that employers remain able to challenge assessments in arbitration on the ground that the assumptions used were unreasonable and expressly left open whether assumptions adopted after the measurement date must rest only on information available as of that date. *Id.* at 1233.

Practical impact: M & K makes timing-based challenges to withdrawal liability assessments more difficult while shifting attention to the substance of actuarial assumptions. Employers evaluating withdrawal liability exposure—in connection with facility closures, asset sales, restructurings, or collectively bargained benefits changes—should be cautious about relying on assumptions used in prior annual valuations as a proxy for ultimate withdrawal liability. For a fuller discussion of the decision and its implications, see our recent client alert on *M & K*.

B. Eleventh Circuit Joins Sixth Circuit on Actuarial Equivalence

As discussed in our May 2026 update, the Sixth Circuit's decision in *Reichert v. Kellogg Co.*, 170 F.4th 473 (6th Cir. 2026), became the first appellate decision to allow claims in the recent wave of cases challenging actuarial equivalence of alternate forms of retirement benefits to proceed, and further appellate guidance was expected. That guidance arrived this quarter in *Drummond v. Southern Company Services, Inc.*, 177 F.4th 1076 (11th Cir. 2026), where plaintiffs alleged that the Southern Company Pension Plan used outdated mortality tables and unreasonable interest-rate assumptions in converting single life annuities into joint and survivor annuities, producing optional benefit forms that were not actuarially equivalent. 177 F.4th at 1080.

The Eleventh Circuit reversed the district court's dismissal. Joining *Reichert*, it held that ERISA's actuarial equivalence requirement obligates plans to use reasonable actuarial assumptions, reasoning that equivalence itself incorporates a reasonableness constraint because it cannot be achieved using arbitrary or outdated assumptions. *Id.* at 1087. The court also allowed plaintiffs' related nonforfeiture theory to proceed, holding that ERISA § 205(i), 29 U.S.C. § 1055(i), permits qualified preretirement survivor annuity charges only to the extent they reasonably reflect the cost of the benefit, which plaintiffs had plausibly alleged the challenged charges exceeded. *Id.* at 1107–08.

Practical impact: Drummond confirms that *Reichert* was not an isolated decision: two courts of appeals have now endorsed the core premise that plans must use reasonable actuarial assumptions when calculating optional forms of benefits. Plan sponsors maintaining defined benefit plans should expect continued scrutiny of legacy conversion factors, mortality tables, interest-rate assumptions, and survivor-annuity charges.

C. Fifth Circuit to Reconsider the Scope of "Appropriate Equitable Relief" En Banc

The Fifth Circuit is poised to revisit whether a monetary "make-whole" surcharge against a fiduciary qualifies as "appropriate equitable relief" that can be sought under ERISA § 502(a)(3). In *Aramark Services, Inc. Group Health Plan v. Aetna Life Ins. Co.*, 162 F.4th 532 (5th Cir. 2025), a December 2025 panel held that a plan sponsor's claims against its third-party administrator for restoration of plan losses sought equitable relief—and so fell within a contractual arbitration carve-out for equitable claims—relying on *CIGNA Corp. v. Amara* and circuit precedent recognizing surcharge as equitable relief. 162 F.4th at 543–44 (citing *CIGNA Corp. v. Amara,* 563 U.S. 421, 442 (2011)). On April 28, 2026, the full court vacated that opinion and granted rehearing en banc.[4]

What to watch: The Fifth Circuit's en banc hearing is scheduled for oral argument during the court's September 2026 session. That decision may bear on a developing circuit split: the Fourth and Sixth Circuits have rejected surcharge as a form of equitable relief available under § 502(a)(3),[5] while the now-vacated *Aramark* panel had recognized it. The Sixth Circuit's decision in *Aldridge* is itself pending certiorari before the Supreme Court. There, the plaintiffs petitioned, and on April 6, 2026, the Court invited the Solicitor General to file a brief expressing the views of the United States—views to which the Court often gives attention. 146 S.Ct. 2152 (Mem), 224 L.Ed.2d 379 (Apr. 6, 2026). Because the availability of make-whole monetary relief shapes both remedies strategy and the enforceability of arbitration carve-outs in plan service agreements, plan sponsors, fiduciaries, and service providers should watch for the Fifth Circuit's

en banc ruling and any further developments in *Aldridge*.

III. Regulatory and Policy Context

Unlike the prior quarter, which saw a significant proposed rule addressing fiduciary decision-making in the investment-selection context, the second quarter of 2026 was marked less by new ERISA rulemaking than by signals regarding the Department of Labor's enforcement and litigation priorities. The public comment period on the Department's proposed rule—which would establish a process-based safe harbor for fiduciaries selecting designated investment alternatives, including those incorporating alternative assets—closed on June 1, 2026, having drawn more than 47,000 public comments. It remains to be seen what the final rule will look like and how far it will depart from the proposal. Gibson Dunn submitted comments on behalf of the American Investment Council, which address the proposed rule in more detail. For a detailed white paper analyzing the comments received, see the firm's client alert.

On April 14, 2026, the Department of Labor's Employee Benefits Security Administration (EBSA) issued Field Assistance Bulletin 2026-01, "Guiding Principles for EBSA Enforcement Priorities." The Bulletin states that enforcement should be "fair, even-handed, responsive, and focused," and identifies four guiding principles: focusing on the most egregious conduct and significant harm; avoiding regulation by enforcement where possible; requiring senior-level review of critical enforcement initiatives; and committing to timely enforcement.

Of particular relevance to ERISA fiduciary litigation, the Bulletin states that EBSA will prioritize civil investigations involving breaches of the duty of loyalty, direct evidence of non-exempt prohibited transactions involving impermissible conflicts, and conduct involving bad faith, misappropriation, or improper administration of plan benefits. At the same time, it emphasizes that ERISA is a law of process, not results, and that where enforcement rests solely on an alleged breach of prudence, EBSA should avoid cases that unfairly second-guess process-based fiduciary judgments. The Bulletin further directs that EBSA should not, where possible, regulate through enforcement or use enforcement actions to announce novel legal theories, and that enforcement activity generally should have a close nexus to ERISA's text, final regulations or prominently published guidance, or clearly established case law, absent approval from EBSA leadership.

The Bulletin also instructs EBSA staff to avoid any appearance that enforcement activities are coordinated with private plaintiffs' attorneys pursuing parallel actions, and a footnote discloses that the Department's Inspector General had been investigating EBSA's past use of common-interest agreements with private plaintiff law firms. The Inspector General has since issued a broader report finding that the Department lacked adequate controls for tracking, monitoring, and sharing confidential information under common-interest agreements. Finally, the Bulletin commits EBSA to concrete investigation timelines—generally eighteen months for routine matters and thirty months for complex investigations, absent exigent circumstances.

This posture is directionally consistent with positions the Department has taken in recent ERISA litigation. The Department has filed amicus briefs in pending 401(k) forfeiture appeals arguing that the use of forfeited employer contributions in a manner permitted by plan terms does not, without more, violate ERISA. The Solicitor General and Department have also filed an amicus brief in the Supreme Court in *Anderson v. Intel* defending the requirement of a meaningful

benchmark. Taken together, the Bulletin and the Department's litigation positions suggest an enforcement approach focused on clear statutory and regulatory obligations, process-based compliance, and cases involving concrete participant harm or conflicted conduct.

Practical context: Although the Department's enforcement guidance does not bind courts or private plaintiffs, it may influence the broader litigation environment. For plan sponsors and fiduciaries, the Bulletin underscores the continued importance of maintaining and documenting prudent fiduciary processes, while signaling that the Department may be less inclined to support theories seeking liability based solely on hindsight disagreement with discretionary fiduciary judgments.

Closing

We will continue to monitor these developments and provide updates as additional decisions are issued and new cases progress.

[1] *Green v. University of Rochester*, No. 6:25-cv-06499 (W.D.N.Y. 2025).

[2] *See, e.g., Cain v. Siemens Corp.*, No. 25-02564 (3d Cir. filed Aug. 19, 2025); *Stana v. SAS Institute Inc.,* No. 26-1305 (4th Cir. filed Mar. 18, 2026); *Hutchins v. HP Inc.*, No. 25-826 (9th Cir. filed Feb. 7, 2025).

[3] *See, e.g., Stana v. SAS Institute Inc.,* No. 26-1305 (4th Cir. July 24, 2026)*; Barragan v. Honeywell Int'l. Inc., No.* 25-2609 (3d Cir. Jan. 30, 2026); *Cain v. Siemens Corp.*, No. 25-02564 (3d Cir. Jan. 23, 2026); *Hutchins v. HP Inc.*, No. 25-826 (9th Cir. July 9, 2025).

[4] *Aramark Services, Inc. Group Health Plan v. Aetna Life Ins. Co.*, 173 F.4th 744 (5th Cir. 2026).

[5] *Rose v. PSA Airlines, Inc.*, 80 F.4th 488 (4th Cir. 2023); *Aldridge v. Regions Bank*, 144 F.4th 828 (6th Cir. 2025).

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