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ERISA

The Year In ERISA Litigation: 2025 Trends And What We're Watching In 2026

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Commentary

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Significant activity in all three branches of government, expanding theories of fiduciary liability, and intensifying health plan-related challenges defined ERISA litigation in 2025. With even more Supreme Court, agency, and legislative activity on the horizon, 2026 promises to be another busy year.

What We Saw in 2025

Supreme Court: Lowering the Pleading Bar for Prohibited Transaction Claims.

In a unanimous decision in *Cunningham v. Cornell University*, the Supreme Court significantly loosened the pleading standard for plaintiffs bringing ERISA prohibited transaction claims. Under the new *Cunningham* standard, plaintiffs who plead the existence of an arrangement between a plan and a service provider can survive a motion to dismiss. Plaintiffs do not need to allege the inapplicability of ERISA's prohibited transaction exemptions (PTEs), which many plans rely on to comply with ERISA for routine plan functions. The Court resolved longstanding divisions among lower courts, confirming that compliance with a PTE is an affirmative defense that cannot be considered at the motion to dismiss stage, because the defendant bears the burden of proving it. The decision will allow more bare-bones complaints to clear the motion to dismiss hurdle and proceed to costly discovery. Recognizing that, the Court identified potential procedural mechanisms for early resolution of meritless claims, and we expect to see the efficacy of those tools tested in 2026.

Defined Benefit Plans: Evolving Pension Risk Transfer and Actuarial Equivalence Litigation.

- PRT Litigation: Plaintiffs continued to attack pension risk transfer (PRT) transactions throughout the year. In these transactions, plan sponsors purchase annuities to replace pension obligations. More than a dozen lawsuits have been filed against plan sponsors who selected private equity-backed annuities for their PRTs, alleging that risky investments rendered them unsafe. These cases have yielded mixed motion to dismiss results, with courts focusing on threshold standing questions—specifically, whether plaintiffs have suffered any injury, since none of the annuity providers have actually defaulted. Defendants have prevailed in four motions to dismiss, plaintiffs have defeated two, and appeals are now pending in the Second and Fourth Circuits. Thus, these cases bear watching in the coming year.

- Actuarial Equivalence Litigation: Approximately 30 "actuarial equivalence" suits have been filed since 2018, generally against large defined benefit pension plans, alleging that defendants violated ERISA by using outdated mortality tables or interest rates to calculate certain pension benefits. While only one new case was filed in 2025, numerous district court rulings spurred appeals in the Sixth and Eleventh Circuits. The resolution of these cases will likely turn on statutory interpretation and whether courts are willing to mandate that plans use "reasonable" actuarial equivalence factors—something ERISA does not explicitly require. Should plaintiffs emerge victorious in these appeals, additional lawsuits in this space will be forthcoming. And should a circuit split develop, parties will be calling on the Supreme Court to resolve the issue once and for all.

Defined Contribution Plans: Expanding Fiduciary Breach Theories.

- Forfeiture litigation: Lawsuits attacking use of forfeited plan accounts surged in 2025, as plaintiffs continued to challenge the longstanding practice of using forfeited funds in defined contribution plan accounts to reduce employer contributions. Funds are forfeited when participants leave employment with the plan sponsor before their contributions are fully vested. More than 60 lawsuits have been filed, and more than half were filed in 2025. So far, defendants have been largely successful at the pleading stage, winning 22 motions to dismiss, with a number of those decisions on appeal. Courts have generally agreed that using forfeited funds to reduce employer contributions is consistent with IRS and DOL guidance, plan terms, and ERISA's fiduciary standards. Notably, the DOL threw its support behind plan defendants in a Ninth Circuit amicus brief, signaling a massive shift in DOL priorities; the agency has traditionally supported plan participants in ERISA matters. Despite plaintiffs' relative lack of success thus far, we expect these lawsuits to persist as appellate courts begin to weigh in.

- Stable value fund litigation: Stable value funds and guaranteed interest accounts remained a target for plaintiffs' firms in 2025. Buoyant equity markets have given plaintiffs the opportunity to attack these low risk, limited volatility investment products by comparing their returns as lower than those of allegedly similar products, and accuse plan fiduciaries of failing to negotiate for better returns through higher crediting rates. Plaintiffs frequently pair fiduciary breach claims with allegations of prohibited transactions and self-dealing, particularly where plan fiduciaries or service providers also manage an underlying fund. Numerous cases are pending, with mixed results so far at the motion to dismiss stage. We expect similar suits to continue as plaintiffs refine theories around appropriate benchmarks, crediting rates, and prohibited transactions.

Health Plan Litigation: Mounting Cases Even as Health Plan Fiduciaries Score Wins.

In 2025, plaintiffs turned up the heat on health plan fiduciaries, with a significant focus on tobacco surcharge programs.

- Tobacco Surcharge Litigation: The trendiest theory against health plan fiduciaries is the tobacco surcharge lawsuit, which attacks wellness programs designed to encourage employees to stop using tobacco products. Although 21 lawsuits have been filed, only a few motions to dismiss have been decided, and only a couple of dismissals have been issued so far. Of note is that one case was dismissed for lack of standing, which may be a positive sign for health plan fiduciaries going into the new year.

- Participant v. Plan Litigation: Several class actions have been brought by plan participants alleging that fiduciary breaches are built into the structure of their employer-provided health plans. Initially, these lawsuits alleged prohibited transactions with pharmacy benefit managers (PBMs), though the two most watched lawsuits have been dismissed for lack of injury and standing. Although amended complaints and appeals are likely forthcoming, following these losses, plaintiffs seem to have pivoted to new theories. A couple recent lawsuits have attacked preferred provider organization arrangements, claiming that low-deductible health care options are impermissibly dominated by high-deductible health care options. And right before the end of the year, one plaintiffs' firm launched four class actions on the same day alleging that plan sponsors and their consultants breached ERISA fiduciary duties and engaged in self-dealing by charging excessive premiums for voluntary benefits, including accident, critical illness, and hospital indemnity insurance. The participants allege that the plan fiduciaries failed to prudently select and monitor insurance carriers and brokers, resulting in participants overpaying for coverage and receiving poor value. It remains to be seen whether these brand new theories will stick, and whether plaintiffs can prove that the voluntary benefit plans are even governed by ERISA. But if a few of these cases survive dismissal, additional lawsuits are certain to follow.

- <u>Plan Sponsor v. Service Provider Litigation</u>: Cases where plan sponsors take the plaintiff's seat to sue the third party administrators responsible for administering their health plans have largely fallen off in 2025. However, a couple of pre-existing cases are heading to trial, and we are watching to see whether these claims will ultimately settle or be decided on the merits.

<u>The Trump Administration Focuses on ERISA</u>

- <u>Alternative Investments</u>: The Trump administration has signaled support for more alternative investments—including private equity (PE) investments—in defined contribution plans. After initially showing a slightly favorable view on offering PE in retirement plans during the previous Trump administration, the current administration doubled down this year. In May, the DOL issued guidance that ERISA fiduciaries need not exercise extreme care before adding alternative investments like cryptocurrency to their plan menus. Then, in August 2025, the president issued an executive order broadly encouraging expanded PE investment options in retirement plans, claiming that a combination of regulatory overreach and a rash of lawsuits were impermissibly hindering PE investment offerings in retirement plans. Meanwhile, in *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015 (9th Cir. 2025), the Ninth Circuit rejected plaintiffs' theories of conflict of interest and self-dealing, but did not provide blanket approval for including PE in retirement plans. However, *Intel*, coupled with the administration's explicit approval of such offerings, could spur more PE offerings in defined contribution plans, to be followed inevitably by more litigation.

- <u>ESG and Fiduciary Governance</u>: The Trump administration is also busy undoing several ERISA-related rules from the Biden era. Under the first Trump administration, the DOL's rules narrowed the use of environmental, social and governance (ESG) funds in ERISA-governed retirement plans. The Biden administration loosened the ESG standards with its 2022 rules, which the Trump administration is again seeking to reverse. In December 2025, President Trump issued an executive order directing the DOL to strengthen its fiduciary rules to ensure that proxy advisers "act solely" in the interest of plan participants and are not politically motivated. The DOL also was directed to determine whether proxy advisers qualify as ERISA fiduciaries subject to the strict standards for managing 401(k)s.

  The Trump administration also plans to issue a new "fiduciary rule" to replace Biden's rule, which was issued in 2024 but never took effect due to court challenges. Biden's fiduciary rule aimed to broaden ERISA fiduciary status to include one-time retirement investment recommendations, such as rolling over funds to an IRA or purchasing an annuity. Though the Trump administration has not identified what the focus of any new fiduciary rule would be, any replacement is likely to be more lenient with respect to one-time advice.

- <u>Congressional Hearing on ERISA Litigation</u>: The House held a hearing in December 2025 that examined whether ERISA class actions—especially post *Cunningham v. Cornell*—are deterring plan innovation and raising plan costs, and whether Congress should tighten pleading standards and discovery in

ERISA suits. Republicans presented witnesses from industry groups and defense firms, who argued that "copy-cat" excessive-fee and prohibited-transaction suits impose outsized costs, and proposed legislation that would require higher pleading standards and discovery stays. Democrats and the AARP countered that private enforcement remains vital and that tightening pleading standards would undermine participant rights when fiduciary information is solely within the plan's control. Given the Republican majority in Congress, this proposed legislation may gain momentum in 2026.

What We're Watching in 2026

ERISA in the Supreme Court: <u>The Meaningful Benchmark Divide.</u>

The Supreme Court has been asked to consider two ERISA cases that seemingly applied different pleading standards to claims that ERISA fiduciaries breached their duties by maintaining imprudent investments in 401(k) plans. In many district courts, plaintiffs must compare allegedly underperforming funds to a "meaningful benchmark" fund that would have yielded higher returns. This requires showing that the benchmark fund is similar enough in risk, composition, target date, etc. Defendants argue that the Sixth Circuit departed from this standard in *Johnson v. Parker-Hannifin*, and compared the funds at issue with an S&P 500 index fund without requiring allegations showing similarities among the funds. The Ninth Circuit's *Anderson v. Intel Corp.* decision took the more common approach of requiring meaningful comparators, and cert petitions are now pending in both cases. The DOL filed an amicus brief in *Parker-Hannifin* supporting the plan defendants' position of adopting a meaningful benchmark standard. We are watching both cases going into 2026.

ERISA Jury Trials in the Second Circuit: <u>The Saga Continues.</u>

The Second Circuit will likely hear arguments in 2026 in a class action against Yale that could create a circuit split around whether jury trials are available for ERISA fiduciary breach claims. Almost all federal courts do not permit jury trials for these claims, but a few district courts in the Second Circuit have reached a different conclusion. In the *Yale* case, a jury found that defendants breached their fiduciary duties but awarded no damages—a perplexing result because a loss to the plan is a key element to proving a breach in the first place. The parties are cross-appealing to the Second Circuit, with Yale arguing that if there is a new trial, it should be a bench trial. We are watching the outcome carefully, because broad access to juries would, at a minimum, spark a gold rush of filings in Second Circuit courts. ■

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