SCOTUS ERISA Ruling May Open Floodgates For Increased Lawsuits

Insights
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In a unanimous decision, the Supreme Court just declined to limit the timeframe in which disgruntled employees could bring suit challenging the investment decisions made by plan fiduciaries. While the Employee Retirement Income Security Act (ERISA) provides a shrunken three-year statute of limitations when workers have "actual knowledge" of an alleged breach or violation, the Court concluded that this shorter period is not triggered when the employee in question chose not to read or did not recall having read all the relevant information about the investments provided by the plan. In such situations, the Court ruled in yesterday's decision, a longer six-year statute of limitations applies. This development opens employers and retirement plan fiduciaries up to an increased risk of legal challenges, while heightening the standard for evaluating breach claims and class action certifications (*Intel Corp. Investment Policy Committee v. Sulyma*).

What Is "Actual Knowledge"?
Under ERISA, participants in employer-sponsored retirement plans have the right to challenge the prudence of decisions that plan fiduciaries make about the investment options available through the plan. ERISA sets time limits for bringing such suits. Section 413(1) gives plaintiffs six years after the end of the fiduciary breach, violation, or omission to bring a legal claim. But Section 413(2) imposes a shorter three-year limit when a plaintiff had "actual knowledge" of the breach or violation.

In this case, Christopher Sulyma enrolled in two retirement plans during his employment with Intel Corp., both of which were governed by ERISA. During this time, the plans' assets underperformed relative to comparable portfolios. Sulyma hypothesized that this was due to higher fees and unduly risky investment choices.

Intel had informed Sulyma of the investment decisions, including the strategy and rationale for the alternative investment choices, via documents available on two websites. The company sent Sulyma regular emails informing him how to access the information. The company also provided Sulyma with plan disclosures including quarterly and annual statements, summary descriptions, and the qualified default investment alternative. Essentially, it did everything a plan sponsor is required to do.

Sulyma filed a lawsuit against Intel in the U.S. District Court for the Northern District of California, alleging that the funds were not properly diversified and therefore violated §1104 of ERISA. Intel moved to dismiss Sulyma's challenge of the investment prudence as time-barred under Section

413(2) of ERISA. It argued that the three-year statute of limitations should be applied to the action because the information it made available to him about the plans' asset allocation and underlying investment strategy should have armed him with "actual knowledge" of the investment decisions. Indeed, Sulyma accessed some of this information. However, he testified that he was not actually aware of the precise composition of his retirement accounts.

Although the lower district court granted Intel's motion, the 9th Circuit Court of Appeals reversed and ruled in Sulyma's favor. The appeals court ruled that "actual knowledge" requires that the plaintiff was actually aware of the fiduciary breach in contrast to "constructive notice," which merely requires that the plaintiff could have accessed the information to learn of the breach. Although the 9th Circuit concluded that although Sulyma had sufficient information available to him to know about the allegedly imprudent investments more than three years before he filed suit, it wasn't sure whether he had "actual knowledge." It cited to his deposition testimony that he was not aware that the funds were invested in a risky manner, and that he did not recall reading the documents alerting him to such investments. For this reason, the 9th Circuit said that the case should not have been dismissed because the three-year statute of limitations should not have been applied.

SCOTUS: Employees Only Have "Actual Knowledge" When They Have Read and Understood Their Portfolio

The Court found that participants only have "actual knowledge" of the prudence of their retirement investments when there is evidence that they read and understood the information contained in the plan documents and other relevant statements. Indeed, several justices were sympathetic to employees during oral argument, drawing on personal experiences to assert that many people do not read their retirement plan disclosures that come in the mail and that the disclosures can be quite voluminous.

Though Intel asserted that the employer's duty should be complete once it has provided the employee with the required documents governing the plan or specific information on where to access the documents, the Court disagreed. It found that being alerted to the existence, importance, and method of accessing the relevant documents by his employer was not sufficient to establish actual knowledge of the information contained within. Therefore, Sulyma's claim was not time-barred and the six-year statute of limitations associated with ERISA Section 413(1) was found to apply.

The Court cautioned that its decision does not prevent usual methods of proving actual knowledge in future litigation. It noted both that plaintiffs will be bound by oaths to be truthful in testimony, and that actual knowledge could be proven through inferences from circumstantial evidence.

What Does This Mean for Employers?

Prior to this ruling, many employers sought to use the abbreviated Section 413(2) statute of limitations to dispose of claims. That defense has now been significantly curtailed.

Employers and plan fiduciaries may now be exposed to litigation challenging plan prudence for double the time they currently anticipate. You may now have to consider taking additional steps to communicate the importance of the plan documents distributed to employees and consider having employees sign acknowledgments of having read and understood plan documents to protect the employer's interests should litigation arise. In the alternative, employers and third-party service providers may want to explore systems that track who has viewed or opened documents available online, in order to later prove they had "actual knowledge" of the plan and its investment strategies.

Additionally, this decision is likely to contribute to the shifting landscape of ERISA class actions. In future ERISA class actions, courts may be forced to determine whether each participant in the plan has read and understood the relevant mailings. If you have any questions about how to effectively defend your business against ERISA claim litigation, or about ways to best comply with this decision, please consult a member of the Fisher Phillips Employee Benefits Practice Group or your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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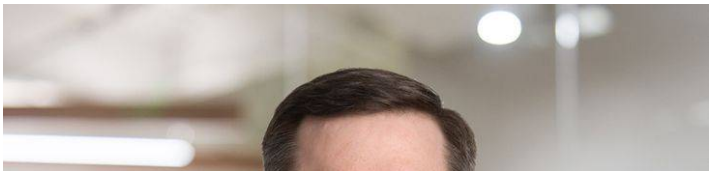

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