



U.S. Supreme Court Rules that ERISA Fiduciaries Have Ongoing Duty to Monitor Plan Investments

In a unanimous decision on May 18, 2015, the U.S. Supreme Court in *Tibble v. Edison International* held that an ERISA fiduciary has an ongoing duty to monitor plan investments. The Court concluded that ERISA's six-year statute of limitations does not bar an action related to investment fund options selected more than six years before the participants brought the action.

Background

The plaintiffs in this case are current or former employees of Edison International, the defendant and sponsor of the Edison 401(k) Savings Plan. The plaintiffs sued Edison and others in 2007 alleging that the defendants breached their fiduciary duties under ERISA by selecting three mutual funds in 1999 that were retail-class mutual funds when identical lower-priced institutional class mutual funds were available. The lower courts dismissed the plaintiffs' claims because the investments were selected more than six years before the complaint was filed in 2007 and the ERISA six-year statute of limitations had run. The U.S. Supreme Court overruled the lower court decisions and held that "*an ERISA fiduciary under trust law has a continuing duty to monitor trust investments and remove imprudent ones. This continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset.*" The Supreme Court concluded that an ERISA fiduciary must conduct the sort of review that a prudent fiduciary would have conducted.

Comments

1. This decision is a reminder that ERISA fiduciaries have a duty to prudently select investment fund options for qualified plans offering participant investment choices, and have a continuing duty to monitor the fund options selected. Imprudent choices should be removed.
2. Determine whether your plan is eligible for institutional-class rates and, if so, consider appropriate changes.
3. Establish a regular and recurring (annual, semi-annual or quarterly) process to review your plan's investment options and change them, if necessary.

4. Review and update the investment policy for your plan, with the assistance of your investment advisor and legal counsel.
5. Are the in-house fiduciaries for your plan covered by fiduciary liability insurance or employer indemnification? If not, determine whether one of these alternatives is appropriate.
6. Document fiduciary decisions related to plan investment options and permanently retain the documentation.

Please let us know if you have any questions or if we can be of assistance.

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