

ESOP Plan Faces Retirement Records Lawsuit

When a former worker at medical technology company BD sought distribution of his vested and accrued retirement assets, the firm said it had no record of his individual account.

Reported by [NOAH ZUSS](#)

An [employer's retention of retirement contribution records](#) is at the center of a new retirement plan lawsuit, brought under the Employee Retirement Income Security Act, against a plan sponsor which had no record of a former participant's salary deferrals and total accumulated assets.

The complaint, filed by plaintiff David Rajpurohit against global medical technology firm Becton, Dickinson and Company in the U.S. District Court for the District of New Jersey, alleges that BD's savings incentive plan did not properly retain records of the contributions made to the 401(k) plan or of the assets accumulated in the plan, states the complaint.

"Plaintiff believes that the value of his shares of BD stock that is unaccounted-for by the defendants exceed[s] four million dollars," the complaint stated. "Plaintiff has never taken a distribution from his vested account in the BD plan at any time up to the current date."

The complaint added, "The BD plan, through [the] administrative committee for the BD plan, BDC and others, provided no written proof that plaintiff had taken a distribution of BD plan benefits."

The plaintiff's attorneys stated in the complaint that Rajpurohit worked for BD from 1976 through 1984, and that during his employment with BD, he and the company both contributed to purchase shares of BD stock for his individual retirement account.

"At no time during his employment at BD, or after his employment at BD, did plaintiff surrender rights under the BD plan or take anything of value in exchange from his individual account in the BD plan," the complaint stated.

The complaint claimed defendants are liable to Rajpurohit for the reasonable value of vested balances in the retirement plan and all amounts recoverable by the plaintiff under ERISA, "including surcharge, reformation or other recognized equitable remedies necessary to make [the] plaintiff whole," the complaint stated.

Plan sponsors are responsible for retirement plan record retention, [affirmed a 2019 plan advisory](#) from the American Institute of Certified Public Accountants' Employee Benefit Plan Audit Quality Center.

However, Drew Oringer, partner in and general counsel at the Wagner Law Group, says this particular lawsuit is "somewhat" uncommon.

"One would ordinarily have expected that the question of participation and the existence of an account balance would not have been overly controversial and would generally not have made it all the way into court," Oringer says via email.

He notes that a possible counterargument by BD has already been answered by the plaintiff, which could augur positively for Rajpurohit.

“The plaintiff alleges full compliance with all administrative claims procedures,” Oringer says. “Failure to exhaust administrative remedies can lead to needless impediments to the pursuit of what might otherwise be perfectly valid claims.”

Many employers have to grapple with the complexities of records retention for missing participants, a particular problem for pension plans enrolling large numbers of workers with deferred vested benefits.

Rajpurohit’s retirement account troubles started after he attempted to claim distribution of his vested and accrued benefits in the DB plan on or about December 31, 2020, according to the court filing.

In response, BD, its plan, the administrative committee of the plan and others advised Rajpurohit that there was no record of his individual plan account and advised the plaintiff to file a formal claim for benefits, according to the complaint.

After a written request for access to his BD plan account, Rajpurohit fielded an administrative appeal of the denial for his claim, which was denied in May 2022, as the defendants allegedly “wrongfully contend[ed] plaintiff must have already taken his distribution from the BD Plan,” according to the complaint.

“The general rules are essentially that records should be retained to allow for the plan to be properly administered and for the finances to be checked,” Oringer says. “But in my experience, usually for something as basic as this, there’s no real issue, because these kinds of basic records are so fundamental to being able to administer the plan. The issues tend to arise where someone is asserting a need for information that isn’t obviously and clearly required, particularly where the participant is looking for copies of the records.”

Rajpurohit’s attorneys argued the BD plan breached its fiduciary duty by failing to retain records, as required by U.S. Code Section 1059(a)(1). Proper retention of records would have shown that Rajpurohit contributed to the plan during his employment, according to the complaint.

“ERISA requires every employer and ERISA plan to maintain records necessary to determine benefits due or that may become due to each employee, participant or beneficiary for as long as the possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary or employee,” the complaint stated. “A plan administrator or other fiduciary administering an ERISA-regulated employee benefit plan should, at a minimum, comply with the terms of the statute, its implementing regulations and all applicable formal and informal guidance issued by the U.S. Departments of Labor and Treasury, as well as the Pension Benefit Guaranty Corporation.”

The IRS website includes information for retention of retirement plan records: “You should keep retirement plan records until the trust or IRA has paid all benefits and enough time has passed that the plan won’t be audited,” the IRS guidance states.

Rajpurohit alleged one count of fiduciary breach under ERISA section 502(a)(3), “for failure to convey complete and correct material information for a beneficiary, including duty to communicate to the beneficiary material facts affecting the interests of the beneficiary which he knows that the beneficiary does not know,” according to the complaint.

Named defendants to the lawsuit are BD, the company savings incentive plan, the 401(k) plan administrative committee, an agent for the plan administrative committee, the administrator of the 401K(k) plan and 20 unnamed individuals.

Rajpurohit is represented by Uscher, Quiat, Uscher & Russo, P.C., and Jonathan Feigenbaum.

Becton, Dickinson and Company did not return a request for comment.

Tags

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