

# ERISA Lawsuit Against NJ Transit Authority Dismissed

The 3rd Circuit Court of Appeals upheld a District Court ruling that government plans are not covered by ERISA.

Reported by [REMY SAMUELS](#)

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The U.S. 3rd Circuit Court of Appeals earlier this month dismissed an ERISA-based lawsuit filed against the New Jersey Transit Authority and appealed from U.S. District Court, based on the fact that government plans are not covered by ERISA.

In *Pue v. N.J. Transit Corp.*, a former bus operator—Anthony Pue—sued the state transit authority in July 2021 under the Employee Retirement Income Security Act, claiming the authority failed to pay certain collectively bargained retirement disability, vacation and holiday time benefits after he retired in 2017 due to debilitating work-related injuries.

According to the [appellate ruling](#), released on April 13, Pue alleged in U.S. District Court for the District of New Jersey that N.J. Transit committed a breach of contract in failing to make the required payments.

The employer responded that, as a government entity, it is not subject to ERISA, and District Judge Freda Wolfson agreed and dismissed Pue's ERISA claims. Pue promptly appealed the District Court's decision and devoted much of his brief appeal to raising constitutional and civil rights claims, most of which were not raised, in District Court, but the 3rd Circuit upheld the original decision.

Under ERISA section 4(b)(1), the law does not cover "government plans." A government plan is defined as a "plan established or maintained for its employees by the Government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

An entity constitutes a political subdivision, according to [Wagner Law Group](#), if it was either created directly by the state or is administered by individuals who are responsible to public officials or to the general electorate.

In the appellate decision, the 3rd Circuit ruled in August 2022 that the employee did not raise any arguments to refute the conclusion that the N.J. Transit Authority is a political subdivision exempt from ERISA. The court noted that N.J. Transit is part of the state's department of transportation and constitutes an "instrumentality of the State exercising public and essential governmental functions."

The 3rd Circuit further observed that the employer was governed by a board whose membership included the commissioner of transportation, the state treasurer, a member of the executive branch selected by the governor and additional public members appointed by the governor, according to [Wagner Law Group](#).

Ultimately, the 3rd Circuit agreed with the District Court decision that the federal courts lacked subject-matter jurisdiction over the employee's ERISA claims.

In the past, the Department of Labor has ruled that a plan funded by a government entity in amounts determined by a collective bargaining agreement is a government plan and therefore is excluded from ERISA. This can be seen in [Advisory Opinion 86-22A](#), in which the West Palm Beach Firefighters Benefit Fund was determined to be a governmental plan not subject to ERISA.

According to Berg Plummer Johnson & Raval LLP, when Congress first crafted ERISA, it intentionally made state and local governments free to decide the best way to protect their employees. However, the [National Association of Plan Advisers](#) has stated that while governmental retirement plans are generally fully exempt from Titles I and IV of ERISA, these plans may be subject to Titles II and III.

As an example, Title II relates to the portion of ERISA that amended the Internal Revenue Code and includes certain plan qualification requirements like limits on plan contributions. These requirements do apply to governmental plans.

Governmental plans are also subject to Title III of ERISA, which contains procedures for co-coordinating enforcement laws between the Department of Labor and the Department of the Treasury.

According to NAPA, it is important for plan sponsors and others who may have discretionary authority over governmental plans to consider any fiduciary requirements and other legal requirements under applicable state law.

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