

Employer Forfeited Funds Complaint Against HP Inc. 401(k) Plan Is Dismissed

A federal judge ruled the suit's 'theory of liability' was too broad and dismissed the complaint, which focused on the use of plan forfeitures.

Reported by [NOAH ZUSS](#)

A California federal judge [dismissed in its entirety a lawsuit](#) that alleged fiduciary breaches by the HP Inc. 401(k) Plan, allowing plaintiff Paul Hutchins 30 days to amend the complaint, if he chooses to refile.

In *Hutchins v. HP Inc. et al.*, the plaintiff had argued that HP Inc. and the HP Inc. Plan Committee breached their fiduciary duties of loyalty and prudence when they chose to allocate forfeited amounts in the plan to reduce employer contributions, rather than to pay administrative expenses. The U.S. District Court for the Northern District of California, San Jose Division, ruled against the plaintiff's alleged theory of fiduciary breach and resultant liability on June 17.

[For more stories like this, sign up for the PLANSponsor NEWSDash daily newsletter. →](#)

"The court finds that Plaintiff's theory of liability has broad reach, and it is the theory's breadth that makes it implausible," wrote U.S. District Judge Beth Labson Freeman in the order granting HP's motion to dismiss.

Forfeited employer contributions accrue when a defined contribution retirement plan participant leaves the plan before meeting the plan's vesting requirements: The unvested employer contributions in the participant's plan account are forfeited.

"The import of these allegations is that, if given the option between using forfeited funds to pay administrative costs or to reduce employer contributions, a fiduciary is *always* required to choose to pay administrative costs," Freeman wrote. "But the flaw in such a theory is that it is not limited to any particular circumstances that may be present in this case."

A 'Novel' Question

The lawsuit presented a novel question, Freeman wrote in the order: "Whether and under what circumstances is a plan administrator's decision to use 'forfeited' employer contributions to a retirement plan to reduce employer contributions rather than to pay administrative costs a violation of the Employee Retirement Income Security Act?"

"This is a new kind of claim being brought," agrees Drew Oringer, a partner in and general counsel at the Wagner Law Group, which was not involved in the litigation. "Plan provisions allowing the use of plan forfeitures in multiple ways is consistent with IRS guidance and has not been pursued by the [Department of Labor,] except where the plan provisions are not being followed."

The lawsuit challenged "a practice that's common in the market, so I think a lot of plan sponsors and practitioners were hoping the case wouldn't have legs," says Oringer via email.

This ruling does not "call for any action to be taken by plan sponsors or plan fiduciaries at this time," explains Marcia Wagner, founder and managing partner at the Wagner Law Group, via email.

Defined contribution plan sponsors are "understandably concerned about these forfeiture cases, because of the possibility that they can overturn a practice that for decades has been unchallenged," she adds.

“Optimally, to the extent that the Departments of Treasury and Labor have differing views on the permissible application of forfeitures, the Departments would reconcile those views so that plan sponsors and plan fiduciaries would have clear rules of the road to follow,” Wagner explains. “Unfortunately, that outcome does not appear likely in the foreseeable future.”

Disagreement in the 9th Circuit

The decision in *Hutchins* conflicted with that in another lawsuit, also heard within the 9th U.S. Circuit Court of Appeals’ jurisdiction (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington), Oringer says.

A federal judge in San Diego last month [denied the motion by Qualcomm Technologies Inc. to dismiss](#) a lawsuit that similarly challenged the company’s use of forfeited contributions.

“The [*Hutchins*] decision is very significant in light of the earlier Qualcomm case that went the other way,” Oringer adds. “The HP decision expressly rejects the Qualcomm result.”

Wagner adds, “one or more of these forfeiture cases will be appealed to the Court of Appeals for the Ninth Circuit, which will reconcile the inconsistent District Court decisions.”

[Wells Fargo was also targeted](#) in a 401(k) forfeited funds complaint filed last month in U.S. District Court for the Northern District of California.

Hutchins is represented by attorneys with the law offices of Hayes Pawlenko LLP. HP Inc. and its plan are represented by attorneys with the law offices of Morgan Lewis Bockius LLP.

Neither representatives of the attorneys for HP nor representatives of the attorneys for the plaintiffs returned requests for comment. Representatives of HP also did not respond to a request for comment.

Tags

[defined contribution retirement plans](#), [Department of Labor](#), [Department of the Treasury](#), [Employee Retirement Income Security Act](#), [employer contributions](#), [ERISA fiduciary duty](#), [fiduciaries](#), [fiduciary breach](#), [forfeited funds](#), [IRS](#), [Matching Contributions](#), [Plan Sponsor](#), [retirement plan forfeitures](#), [Wells Fargo](#)

Reported by

[Noah Zuss](#)