

401(k) Forfeiture Lawsuit Wave Still Splashing West Coast

Recent rulings show use of forfeited funds to reduce future employer contributions instead of lowering plan expenses may violate ERISA, trumping IRS guidance



by Brian Anderson, Editor-in-Chief · August 20, 2024 · ⌚ 3 minute read



August has been a hot month for retirement plan litigation—and particularly so in California, where a wave of recent misuse of forfeited funds lawsuits are mostly clearing the motion to dismiss hurdle.

A California federal judge's recent decision not to dismiss a federal benefits lawsuit alleging Intuit Inc. (*Rodriguez v. Intuit Inc.*) misspent 401(k) plan forfeitures shows how a new pleading approach has gained traction in some district courts—despite recent guidance from the Department of Labor and IRS about how plan sponsors have increased flexibility on how they can use forfeitures.

The wave of forfeiture lawsuits against plan sponsors focuses on the practice of using forfeited funds—from unvested employer contributions when an employee leaves before fully vesting—to offset future employer contributions. Plaintiffs in the cases argue that such practices violate fiduciary duties under the Employee Retirement Income Security Act (ERISA).

The Internal Revenue Code allows 401(k) plans to use forfeitures to reduce employer contributions to the plan or reduce plan expenses. Plaintiffs in the cases claim ERISA guidelines mandate that their fiduciary duty in such situations is to reduce plan expenses, and that ERISA trumps the IRS.

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The Wagner Law Group this week released an update related to several class action lawsuits alleging that plan fiduciaries violated their duties of prudence and loyalty under Title I of ERISA by applying forfeitures to reduce employer

contributions instead of to reduce administrative expenses assumed by plan participants. The complaints also alleged that applying forfeitures to reduce employer contributions violates ERISA's anti-inurement provision and constitutes a prohibited transaction under ERISA Sections 406(a) and (b).

Back in May, a decision by a U.S. District Court judge in the Southern District of California denied Qualcomm's motion to dismiss a forfeiture case filed against it (*Perez-Cruet v. Qualcomm Inc. et al.*). About a month later, decision by a United States District Court judge in the Northern District of California did the opposite and granted a motion to dismiss in a forfeiture case where HP Inc. was the defendant (*Hutchins v. HP Inc. et al.*). In that case, the court found that the defendants were acting as fiduciaries when they decided to allocate forfeited amounts to reduce employer contributions rather than to pay plan expenses.

It is noteworthy that in the HP case where the motion to dismiss was granted, the judge found that plaintiffs might be able to plausibly allege a claim based on more particularized facts or special circumstances and granted leave to amend.

The Wagner brief went on to say the district court in the Intuit case addressed and overruled arguments seeking to dismiss substantive causes of action based on allegations asserting the misuse of plan forfeitures (the same allegations filed by the same law firm in the Qualcomm and HP Inc. cases, Hayes Pawlenko LLP). In Intuit, the Court concluded that the plaintiff had plausibly alleged violations of ERISA.

Two more lawsuits alleging misconduct with regard to the use of forfeiture amounts have been filed in August—one involving Bank of America (*Becerra v. Bank of America Corp.*) filed in U.S. District Court for the Central District of California and the other against Nordstrom filed in U.S. District Court for the Western District of Washington (*Washington et al. v. Nordstrom Inc. et al.*). The allegations in the Bank of America case are similar to those of the Intuit, Qualcomm and HP cases, while the Nordstrom case claims the Nordstrom

401(k) Plan Retirement Committee improperly utilized forfeiture amounts in a way that benefited Nordstrom and disfavored participants—but further alleges the Committee caused the plan to pay excessive fees for recordkeeping and other administrative expenses.

“The recent decisions in Intuit and Qualcomm are certainly welcome news for the plaintiffs in the 11 forfeiture cases filed so far as well as for any plaintiffs considering bringing additional actions,” The Wagner Law Group’s [Aug. 19 blog post](#) stated. “In addition, they highlight the difficulties inherent in defendants’ arguments seeking to easily dismiss these cases.”

The blog concluded that recent rulings and additional August filings continue to serve as signals for plan sponsors to review the forfeiture provisions of their defined contribution plans to determine what actions might reduce risk of litigation on similar allegations.

It said plan sponsors and relevant fiduciaries could also defer decisions on the allocation of forfeitures to see if decisions on the motions to dismiss in the other cases challenging the allocation of forfeitures provide additional guidance.

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- [Forfeiture Litigation Raises New Issues for Plan Fiduciaries](#)
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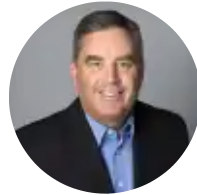
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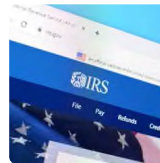
Brian Anderson, Editor-in-Chief



Veteran financial services industry journalist Brian Anderson joined 401(k) Specialist as Managing Editor in January 2019. He has led editorial content for a variety of well-known properties including Insurance Forums, Life Insurance Selling, National Underwriter Life & Health, and Senior Market Advisor. He has always maintained a focus on providing readers with timely, useful information intended to help them build their business.



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