

# Nordstrom Suit, HP Revival Add to 401(k) Forfeiture Cases

A Wagner Law Group attorney says plan sponsors should review their plan documents, as Nordstrom is the latest employer challenged over its use of forfeited funds.

Reported by [AMY RESNICK](#)

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New and ongoing litigation regarding plan sponsors' use of forfeitures under the Employee Retirement Income Security Act means plan sponsors should carefully review the forfeiture provisions of their defined contribution plans, an ERISA attorney says.

Michael Schloss, of counsel at the Wagner Law Group, says use of forfeiture amounts is "built into the structure of these types of plans."

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In a law alert from his firm this week, Schloss also wrote that "consideration should be given to whether fiduciary decisions relating to forfeitures could be seen as relieving the employer of an obligation to the plan and imposing additional costs on participants and whether action should be taken now that might mitigate any litigation risk going forward."

The Wagner alert came just days after a new fiduciary breach suit was filed against retailer Nordstrom Inc., citing use of forfeitures, the costs of a managed account service and excessive recordkeeping fees, and shortly after the revival of an earlier forfeiture case against HP Inc., which was initially [dismissed last month](#).

The new case, [Curtis McWashington et al. v. Nordstrom Inc. et al.](#), was filed on August 12 in U.S. District Court for the Western District of Washington. The plaintiffs are seeking class action status.

Represented by lawyers from Keller Rohrback LLP, Walcheske & Luzi LLC and Schneider Wallace Cottrell Konecky LLP, the plaintiffs claim the retailer, its board of directors and the Nordstrom 401(k) Plan Retirement Committee "failed to fulfill their fiduciary duties to prudently and loyally ensure the Plan's total recordkeeping and other administrative expenses were reasonable and not excessive, as well as engaged in self-dealing with regard to Plan forfeitures in violation of ERISA fiduciary prohibited transaction rules."

The Nordstrom plan had 11,352 participants and \$3.9 billion in assets at the end of 2023, according to the plan's 2023 Form 5500.

The case against HP is an [amended version of the suit](#) that was dismissed. The new suit was filed July 17 by plaintiff Paul Hutchins, as a representative of a class of participants and beneficiaries on behalf of the HP Inc. 401(k) Plan in U.S. District Court for the Northern District of California. The [court gave HP until Friday](#) to respond and scheduled further proceedings on the company's motion to dismiss.

Hutchins is represented by the law firm Hayes Pawlenko LLP.

Schloss, in an interview with PLANSPONSOR, says [the range of forfeiture cases](#) pending against Nordstrom and other employers, including Bank of America Corp., Intuit Inc. and Qualcomm Inc., stem from IRS rules for the plans to qualify for tax-preferred status under ERISA that include permitted uses of forfeiture amounts.

While he says the various federal courts in which similar ERISA cases about forfeitures are pending will have to sort out how those funds fit into the fiduciary duties of prudence and loyalty set out in Title I of ERISA, he believes, ultimately, “this can be resolved in plan documents.”

Haffner Law PC is representing the plaintiffs in the BofA suit, and Hayes Pawlenko is leading the litigation in the Intuit and Qualcomm suits.

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