

# ESG Court Ruling Could Prompt 401(k) Upheaval

A ruling that American Airlines violated its fiduciary duty by letting its 401(k) manager, BlackRock, pick investments with ESG considerations may cause "copycat" lawsuits, according to Bloomberg.

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The 401(k) plan industry may be embarking on major changes in light of a lawsuit against **American Airlines** involving environmental, social and governance investing, according to Bloomberg.

Earlier this month, U.S. District Judge **Reed O'Connor** ruled that allowing **BlackRock**, which managed the airline's 401(k) plan, to consider ESG factors when picking investments for the plan meant that the airline didn't adhere to its fiduciary duty of loyalty, the news service wrote.

The judge wrote that "ESG investments often underperform traditional investments by approximately 10%," according to Bloomberg.

While BlackRock isn't a defendant in the case, O'Connor also opined that the asset management giant has "an alarming degree of control and influence over the industry" and, as a result, "can effectively rig the process in a cartel-like manner," according to the news service.

O'Connor has asked for more information from the plaintiff and the airline before deciding on damages, Bloomberg wrote.

American Airlines told the news service in a statement that it has never offered ESG options in its retirement plan.

"In fact, the committee that considers investments for our 401(k) plan expressly rejected ESG investments," the company told Bloomberg.

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But O'Connor opined that the airline knew that BlackRock was integrating ESG-factor investing through 2022 and didn't take "affirmative steps on its own to review, monitor and evaluate BlackRock," according to the news service.

BlackRock, in response to O'Connor's ruling, told Bloomberg that it acts "independently and with a singular focus on what is in the best financial interests of our clients. Our only agenda is maximizing returns for our clients, consistent with their choices."

Any appeal would end up in the U.S. Court of Appeals for the Fifth Circuit, which is known for its persistent conservatism, according to the news service.

O'Connor's ruling could already bring similar lawsuits, **Marcia Wagner**, founder and managing partner of **Wagner Law Group**, which specializes in the Employee Retirement Income Security Act, told the news service.

That may end up being a large number: Nearly every investment company has integrated ESG factors into its selection criteria in recent years, **Donald Calcagni**, chief investment officer of **Mercer Advisors**, told Bloomberg.

By **Alex Padalka**

- To read the Bloomberg article cited in this story, go to <https://www.bloomberg.com/news/articles/2025-01-29/esg-ruling-against-american-airlines-could-eventually-upend-401-k-plans>

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