LinkedIn Settles 401(k) Excessive Fee Complaint for $6.75 Million

The social media company has agreed to pay participants in a class action case who alleged it did not shop for less-expensive investment options.

Reported by ALEX ORTOLANI AND NOAH ZUSS

LinkedIn Corp., which is owned by Microsoft Corp., settled for $6.75 million a 401(k) excessive fee complaint made in August 2020, according to court filings.

The social media company settled over allegations made by participants of its 401(k) profit-sharing plan and trust that it did not try to reduce plan expenses or scrutinize investment options closely enough within the plan, according to a settlement agreement filed on March 3 in the U.S. District Court for the Northern District of California.

Any participants in the plan from August 14, 2014, through July 1, 2020, are subject to payouts from the settlement, according to filings in the case overseen by U.S. District Judge Edward J. Davila. The amount paid to each participant will be determined by an allocation plan depending on each participant's investment, the filing said. Under the terms of the settlement, there are no findings, admissions or "suggestion of any wrongdoing or liability by any defendants."

"This is another in a growing group of lawsuits in which the plaintiffs allege that plan fiduciaries imprudently chose funds with excessive fees as investment options under a 401(k) plan," Andrew Oringer, partner and general counsel with the Wagner Law Group, wrote by email. "The plaintiffs and their attorneys have an interest in settling in that the chance of actually prevailing on such a fact-sensitive claim is generally speculative at best. A bird in the hand is worth two in the bush, so to speak."

The plaintiffs, Douglas G. Baily, Jason J. Hayes and Marianne Robinson, had alleged that the plan managers for assets as high as $817 million had not used their "substantial bargaining power" to utilize the lowest fees and expenses for participants' investments.

The plaintiffs alleged in part that LinkedIn's plan administrators failed to use the lowest-cost share class for many of the mutual funds in the plan and failed to consider certain collective investment trusts available as lower-cost alternatives to the mutual funds.

The plaintiffs called out the Fidelity Freedom Funds target-date fund series in their complaint. They alleged that LinkedIn should have considered a cheaper, index-linked version, as opposed to an actively managed one, among other potential lower-cost options that would have saved participants millions of dollars.

They also alleged that the plan had conflicts of interest, because Fidelity was the both the recordkeeper of the retirement plan and the asset manager for the fund series. This placed Fidelity "in positions that allowed them to reap profits from the plan at the expense of plan participants," the complaint alleged.

"One way to look at litigation like this is that it encourages compliance," Oringer wrote. "A contrary view is that the litigious nature of the today's U.S. retirement setting results in an unfortunate waste of time, effort and money on employers and administrators just trying to offer employees a 401(k) plan."

Neither LinkedIn nor Fidelity responded immediately to request for comment on the settlement.

Tags 401(k) fees, 401(k) lawsuits, ERISA, retirement plan excessive fee lawsuit

Reported by Alex Ortolani and Noah Zuss