ERISA’s Next 50 Years

As defined contribution plans have taken over for defined benefit plans over the first 50 years of the landmark legislation, enabling increased access to 401(k)s, more personalization, better use of auto features and retirement income are among the key issues ERISA is expected to face looking forward.

by **Brian Anderson** · November 27, 2024 · 10 minute read

As ERISA marked its 50th anniversary this fall, there has been plenty of reflection on the profound impact this landmark legislation has had on the nation’s retirement landscape. It’s hard to overstate that impact, actually, for a law often referred to as “the most important law that nobody’s ever heard of” (outside of the retirement and employee benefits industries, anyway).

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> Michael Davis, T. Rowe Price

The Employee Retirement Income Security Act—better known as simply ERISA—was enacted in 1974—in spectacularly bipartisan fashion—in response to growing concerns about the security of private-sector pensions. The law came about following some high-profile pension failures, including the collapse of the Studebaker Corporation’s pension plan in the 1960s, which left many workers without retirement benefits. ERISA established minimum standards for pension plans, ensuring that benefits are protected and fiduciaries manage plans responsibly. It also created the Pension Benefit Guaranty Corporation (PBGC) to safeguard pension benefits for workers if their plan fails.

As 401(k)s and IRAs started to become more popular in the 1980s and the decades since, ERISA evolved to accommodate the newer retirement vehicles. Key changes included enhanced fiduciary responsibilities, greater emphasis on participant disclosure, and rules governing how contributions and investments are managed. The law also expanded to provide protection for retirement savings portability and flexibility, ensuring individuals could manage their retirement assets across various job changes and plan types.

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As the workplace continues to evolve, ERISA has evolved right alongside it.

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“Defined contribution plans have become the vital force behind a secure retirement for most U.S. workers, and while ERISA has laid a strong foundation for retirement savings in America, the work is not yet done,” Michael Davis, head of global retirement strategy at T. Rowe Price, said as the company presented its ERISA 50th Research Project in September. “By focusing on adoption of effective auto-features, addressing racial and gender savings disparities, and delivering personalized solutions for workers, we can continue to improve retirement coverage and outcomes for all Americans.”

Jeff Clark, Head of Defined Contribution Research at Vanguard, echoed that sentiment, and said that 50 years after ERISA, 401(k) plan design is stronger than ever. “The power of automatic savings solutions—such as auto enrollment and annual auto increases—has improved outcomes for participants,” Clark said.

While much has been written about the history of the law and important changes to it over the past 50 years, *401(k) Specialist* wanted to take a closer look at what the *next 50 years* might hold in store. With that in mind, we asked some high-profile ERISA experts for their thoughts on where ERISA is headed and what retirement plan advisors need to be thinking about moving forward.

No Crystal Balls

Predicting how ERISA will evolve in the next 50 years is no easy task. One reason why, says Wagner Law Group Founder Marcia Wagner, is the heightened level of partisanship that currently exists making it difficult for even technical corrections legislation to be enacted. “Assuming that bipartisanship reemerges to some extent, it would be appropriate for Congress to consider the decline of the traditional defined benefit plan and its replacement by the 401(k) plan, as well as the phenomenal growth of IRAs,” Wagner said.

“Even if the Fifth Circuit again invalidates the DOL’s efforts to redefine those parties who are ERISA fiduciaries because they receive a fee, it is difficult to quarrel with the DOL’s conclusions that the manner in which the private sector operates currently is radically different from the manner in which it operated in 1974.”

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Marcia Wagner, The Wagner Law Group

Other than there being increased attention to the role of fiduciaries in the welfare plan context, Wagner said she does not believe the role of fiduciaries will change.

"Regardless of the particular issue, the way in which fiduciaries will need to address those issues over the next half century will be the same manner in which they have addressed them over the past 50 years, with a focus upon ERISA's core fiduciary principles of prudence, loyalty, diversification of plan assets," she said.

"Not only will the core obligations of an ERISA fiduciary remain constant, but for the most part (the treatment of forfeitures in defined contribution plans being a notable exception), the issues that they will be addressing are not always novel," Wagner continued. "ESG issues are the same as those raised by apartheid in South Africa in the 1970s, and DOL's attempts to modify the rules relating to investment advice fiduciaries are simply a current attempt to address the misalignment of interests between trustees and beneficiaries."

Both Wagner and fellow noted ERISA attorney Fred Reish, partner at Faegre Drinker, said some of the most significant changes on tap for ERISA in the coming decades will likely be related to healthcare instead of retirement.

"Over the next 50 years, the biggest changes and the most litigation will be in the healthcare area," Reish said, citing reasons such as the aging of Baby Boomers and the needs of older people for healthcare; the costs; the lack of transparency; and the fact that the healthcare practices are largely unexplored by litigation and publicity.

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