

401(k) Fee Suits on the Rise

In-House News:

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By Anique Gonzalez

Following the surging trend of employees filing lawsuits against their employers, employers have yet another reason to be wary: 401(k) plans. Recently, fees associated with 401(k) plans have come under close scrutiny and are resulting in mounting lawsuits against small and large corporations alike.

The timing of the suits, whether planned or not, coincides with investigations by three federal entities: the U.S. Department of Labor, the U.S. Securities and Exchange Commission, and a congressional committee. These inspections are looking into the fees employees must pay for 401(k) plans, mutual funds, annuities, and other retirement programs, as well as the accessibility of the information associated with those fees. Interestingly, some suits are even going after employees who are aware of excessive fees but choose to participate in such plans anyway.

Starting in the fall of 2006, Schlichter, Bogard & Denton began filing class action lawsuits claiming the companies they filed against, including The Boeing Company, Kraft Foods, Inc., and Bechtel Group, Inc., did not act in good faith. Namely, they allegedly permitted intermediaries to charge employees unnamed and often excessive fees in relation to their 401(k) plans. Thus far, Schlichter Bogard has filed 13 suits in all.

The claims have been filed under ERISA, the Employee Retirement Income Security Act of 1974, which the firm believes will substantiate the allegations that the fees in question were "excessive," "unreasonable," or related to "revenue sharing."

However, Schlichter Bogard is not the only firm filing suits. Keller Rohrback and McTigue & Porter have also filed similar claims against major corporations such as ING Life Insurance Annuity Company, General Motors Corporation, and Radio Shack Corporation. These claims not only address the availability of fee information but also whether offering plans with excessive fees is in the best interest of the employee.

The majority of the suits filed by Schlichter Bogard have been able to withstand motion-to-dismiss claims filed by the defendants, although not all claims have been found in the firm's favor. A case against Exelon Corporation, for example, was dismissed after a judge found that there were no unwarranted fees associated with the company's 401(k) plan. Additionally, in another claim, a federal judge rejected defendants in a case against Northrop Grumman.

It is likely the number of suits will continue to grow in the coming years. The U.S. Government Accountability Office released a report stating that increasingly mutual fund companies do not properly divulge information associated with 401(k) fees charged to employees. Moreover, the legal pressure on such companies continues to mount. Three months ago, for instance, financial experts appeared before a congressional hearing related to excessive 401(k) fees.

Thus far, the likely outcome of these cases is unclear. What is clear, though, is this: if 401(k) suits are increasingly found in favor of employees, the number of lawsuits filed will drastically rise and the landscape of 401(k) and associated retirement plans will dramatically be altered by companies and the government alike.

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Schlichter, Bogard & Denton

www.uselaws.com

U.S. Department of Labor

www.dol.gov

U.S. Government Accountability Office

www.gao.gov