2026 Employee Benefits Webinar

HansonBridgett

Mid-Year Fiduciary Update

Public Agency Employers

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Presentation Team

Edward Bernard
Partner | San Francisco, CA
415.995.5807
ebernard@hansonbridgett.com

Nancy Chawla
Senior Associate | Los Angeles, CA
213.395.7665
chawla@hansonbridgett.com

Mikaela Habib
Senior Associate | San Francisco, CA
415.995.5875
mhabib@hansonbridgett.com

Soohuen Ham
Associate | San Francisco, CA
415.995.5148
sham@hansonbridgett.com

Nancy Hilu
Counsel | Los Angeles, CA
213.395.7617
nhilu@hansonbridgett.com

Matt Peck
Partner | Walnut Creek, CA
415.995.5080
mpeck@hansonbridgett.com

Benjamin F. Spater
Counsel | Walnut Creek, CA
925.478.2025
bspater@hansonbridgett.com

Alison Wright
Partner I Walnut Creek, CA
415.995.5083
awright@hansonbridgett.com

Agenda

- Government Plan Fiduciary Rules
- Legislative and Regulatory Update
- Litigation Update
- Annual Review of Plan Document and Operational Compliance

Government Plan Fiduciary Rules

Becoming a Fiduciary Under State Law

- There may be fiduciary designations under the provisions of the California statutes that authorize the establishment of your plan (i.e. Government Code, Education Code, Public Utilities Code, etc.) (see e.g. Gov. Code sections 53609, 53216.6)
- The terms of your governing documents (plan document, trust agreement, investment policy statement, SPD) may designate fiduciary status (either directly or by designating functions to be performed)
- California Constitution Article XVI, Section 17 describes the fiduciary duties that apply to a "retirement board", defined as those "governing the system"– refers not only to designation but also represents a functional test—one who is carrying out "governing" functions for a governmental retirement plan

State and Federal Law Based on Same Principles

- Similarly, under ERISA, the law that governs private sector plans, a fiduciary is anyone who:
  - Exercises any discretionary authority or discretionary control respecting the management of the plan;
  - Exercises authority or control respecting management or disposition of plan assets;
  - Has any discretionary authority or discretionary responsibility in the administration of the plan; or
  - Renders investment advice for a fee

  (ERISA § 3(21).)
- Like California, ERISA has a "functional" test – title or position isn't necessarily dispositive

Why We Care About ERISA

- There are references in this program to "ERISA"—the Employee Retirement Income Security Act of 1974, the law governing private sector retirement plan fiduciaries
- The ERISA fiduciary rules do **not** apply to public sector retirement plan fiduciaries
- Fiduciaries of public sector/governmental plans may find applicable rules in the California Constitution, various California statutes, the common law, and various plan documents
- California Constitutional and statutory provisions were based, like ERISA, on the common trust law applicable to fiduciaries
- This resulted in California's rules for governmental plan fiduciaries being virtually identical to the ERISA fiduciary provisions

Why We Care About ERISA

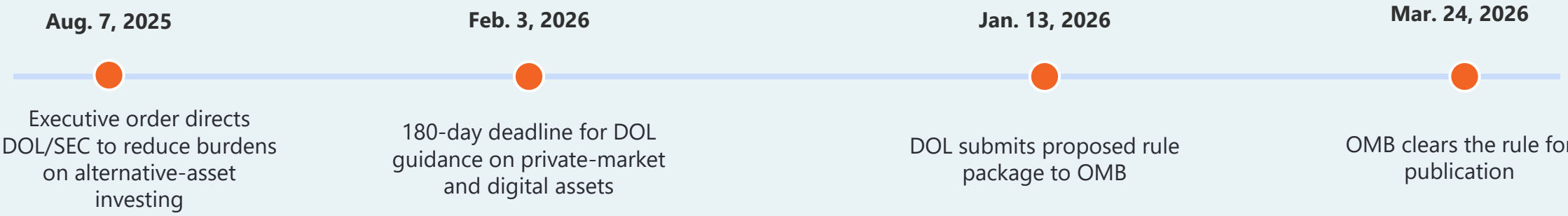
- Courts may look to ERISA for guidance on public sector fiduciary issues where there is no available State law guidance
- Compliance with ERISA is considered a best practice in many areas (and sometimes incorporated into the California statutes-e.g. GC 53213.5(b) incorporating ERISA 404(c) requirements by reference)
- Fiduciary litigation that begins in the private sector often carries over to public sector plans

Legislative and Regulatory Update

Defined Contribution Plan Investments Update

Regulatory developments in alternative investments, ESG, proxy advisory guidance, and CIT pricing trends

DOL Initiative to Promote Alternative Investment Products



- Stems from President Trump's August 7, 2025, executive order directing DOL and SEC to relieve regulatory burdens and litigation risk impeding alternative-asset investment by DC plan participants
- EO directed DOL to clarify guidance on private-market and digital investments in retirement plans within 180 days (by Feb. 3, 2026) — covering private equity, private credit, infrastructure, and cryptocurrency
- Secretary Chavez-DeRemer: goal is a retirement system that allows more Americans to retire with dignity through greater investment diversity

DOL Proposed Regulation re Fiduciary Duties in Selecting DIAs

Published March 31, 2026 — creates a process-based safe harbor and a legal presumption of prudence, built on six required factors, considered objectively, thoroughly, and analytically:

1. **Performance**
   Track record and expected returns relative to stated objectives

2. **Fees**
   Cost relative to value and services provided

3. **Liquidity**
   Ability to redeem/trade within a reasonable time and without excessive cost, particularly relevant for private/illiquid assets

4. **Valuation**
   How and how often the investment is priced, and whether that methodology is reliable and defensible

5. **Benchmarking**
   Availability of a "meaningful" comparison to assess risk-adjusted returns against similarly-mandated strategies

6. **Complexity**
   How difficult the investment is for a fiduciary to understand, explain to participants, and monitor over time

Criticism of the Proposed Regulations

- The rule is broader than expected. It's just a restating of general fiduciary investment duties, with a strong inference that private-markets investments can satisfy these rules or should not be viewed as barred from satisfying the rules
- Published criticism generally converges on the same core gap: the rule assumes benchmarking infrastructure the private-markets industry hasn't built yet
  - No standardized private-market benchmarks exist industry-wide, unlike public stock/bond indexes — without a "meaningful benchmark," fiduciaries can't reliably invoke the safe harbor
  - Existing benchmark providers (e.g., Morningstar) haven't converged on one standard — and the benchmarks they do have were built for old-style, closed-end funds, not the new ongoing, open-ended DIA funds now being proposed to offer to 401(k)s. The comparison tools just don't fit the product
  - Conflict-of-interest risk: a manager's proprietary benchmark, paired with its own funds sold to the plan, could itself invite litigation

Criticism of the Proposed Regulations

- Fees relative to performance comparisons are hard to defend given the typical lack of historical track records
- Liquidity risk is untested inside 401(k) structures; valuation mismatch (daily-priced funds holding quarterly-valued illiquid assets) creates litigation exposure in volatile markets
- Complexity may itself deter adoption — fiduciaries may avoid complex products simply to sidestep litigation risk, even where the rule doesn't disqualify complexity outright

DOL Plans to Revamp Prohibited Transaction Exemption Program

- Per DOL's 2026 regulatory agenda: EBSA updating the PTE Procedures Regulation (29 CFR part 2570) to reduce regulatory burdens on exemption applicants
- Updates guidance issued January 2024 under the Biden administration
- Proposed rulemaking targeted by August 2026
- Framed as part of the broader deregulatory push alongside the DIA safe harbor rule

EBSA Chief Vows Focus on ESG in 401(k)s

- FAB 2026-01 (April 2026): EBSA will prioritize investigations evidencing loyalty breaches, including "conduct designed to enrich themselves or other goals unrelated to participants' best interests, such as the promotion of environmental, social, or governance objectives." Assistant Secretary Aronowitz reinforced this in May 2026 remarks at The ESOP Association's National Conference, saying EBSA will target "disloyal pursuits of" ESG or DEI
- Analytical note: this framing collapses two distinct Fiduciary inquiries into one — considering ESG becomes a per se prudence violation (non-pecuniary factor) and, simultaneously, a deemed loyalty violation (a non-pecuniary goal, even where no bias or self-interest) — triggered by the same single fact, with no good-faith defense available under either theory. Notably, the FAB pairs “enrich themselves” (self-dealing) and ESG-promotion in the very same clause — direct support that the DOL is treating utilization and self-dealing as equivalent

EBSA Chief Vows Focus on ESG in 401(k)s

- This blurs a distinction found in the recent *Spence v. American Airlines* case — the actual case underlying this impetus for this enforcement position — that case required proof of a genuine conflict (BlackRock's own equity and debt stake in American) to establish disloyalty, and found no prudence violation at all; EBSA's per se framing above requires neither showing
- Speculative rationale: loyalty violations require no showing of financial harm — a *per se* loyalty theory is far more efficient to enforce than prudence claims, which require proving a comparative financial loss under a "process, not results" standard that favors fiduciaries

DOL Proposed ESG Investing Rule

- "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" — submitted by EBSA to OIRA June 30, 2026
- Revises the 2022 rule so fiduciaries select investments/exercise shareholder rights based only on financial considerations, never to advance social causes—thus replacing the current rule allowing ESG as a tiebreaker between financially identical options
- **TAKEAWAY**: the 2026 proposed rule reaffirms the always-existing statutory duty of loyalty (i.e., best interest of the participant — unchanged, not something the rule can alter) while substantively redefining the duty of prudence to require investment and proxy-voting decisions be based solely on pecuniary factors (financial only, i.e., not social, etc. — a regulatory standard DOL can and does change by administration). practical effect: loyalty gives plaintiffs a conflict-of-interest theory that's always been available but nonetheless equates ESG with a loyalty violation; prudence, once redefined in final form as pecuniary-only, gives them a second, easier-to-prove categorical theory layered on top. The latter will still likely change from administration to administration
- Congress in parallel: House passed the "Protecting Prudent Investment of Retirement Savings Act"
- The FAB and the proposed rule pursue the same substantive policy goal: restricting (or eliminating) ESG-based decision-making

DOL Technical Release re Proxy Advisors

Issue 1 — Fiduciary Status

- Proxy advisors exercising authority over shareholder rights, or providing fee-based proxy-voting advice, must meet ERISA's functional fiduciary requirements
- Disclaimers of fiduciary status are not determinative

Issue 2 — Preemption

- State laws requiring proxy-advisor disclosure — when recommendations aren't aimed at maximizing risk-adjusted return — are generally not preempted by ERISA

Committee Takeaway

Direct the 3(21) or 3(38), whichever applies, to confirm at least annually — as a standing agenda item — that proxy voting affecting plan assets is in participants' best financial interest and is not conflicted, by virtue of not considering ESG/DEI factors, based on the current enforcement and regulatory climate discussed above.

Recent Trend: CIT "Relationship Pricing" and the 3(38) Connection

- **Documented:** CIT asset managers are increasingly offering discounted CIT share classes to large distribution partners (i.e., investment advisory firms, broker-dealers, recordkeepers, etc.) who commit to minimum asset thresholds over time
- **Anecdotally:** CIT asset managers negotiating these relationship-pricing agreements with large advisory firms (e.g., Mercer Advisors, CAPTRUST, etc.) may count only the advisor's discretionary (3(38)) assets under management in the aggregate toward the volume threshold — presumably because only discretionary assets are reliably deliverable; a 3(21) advisor can only recommend, not move assets unilaterally across its book
- The result creates a potential fiduciary quandary: is the 3(38) being selected, or an investment being retained, partly because of the fee-discount access it unlocks — rather than purely on its merits?

Recent Trend: CIT "Relationship Pricing" and the 3(38) Connection

- **PRACTICAL TAKEAWAY FOR FIDUCIARIES (e.g., Committees)**
  - **Identify these relationship-pricing models and document that:**

1. The primary basis for the selection of the 3(38) is their qualifications as an advisor, not their access to investments, and;

2. As part of their ongoing monitoring duties, the 3(38) is required by the fiduciary to demonstrate that any decision to maintain an investment is pecuniary and in the best interest of participants — not on account of the 3(38) advisor's access to the discounts

CA AB 3275 – Claims Payment Reform (fully insured plans only)

- **Faster payment deadlines effective January 1, 2026**: Health insurers and health care service plans (including Medi-Cal managed care) must reimburse claims within 30 calendar days of receipt — replacing the prior "working days" standard and the HMO 45-day extension
- **Prompt notice on incomplete or contested claims**: If a claim doesn't meet "complete claim" criteria, the carrier must notify the claimant as soon as practicable, but no later than 30 calendar days — with no additional window after receipt of missing information
- **Complaints treated as grievances**: A complaint about a claim delay/denial must be handled through the plan's formal grievance process, giving employees a structured escalation path
- **ERISA preemption — self-insured plans are not affected**: The law applies to fully-insured plans regulated by California. Law does not apply to self-insured employer plans, including plans subject to ERISA preemption
- **Practical takeaway**: Audit your fully-insured carrier contracts and service agreements; confirm carriers have updated their workflows and grievance procedures, and consider communicating the new dispute rights to employees enrolled in fully-insured coverage

PBMs - DOL Proposed Rules

- **Expanded disclosure requirements for PBMs**. Requires PBMs and related brokers/consultants to disclose detailed compensation and service information to self-insured health plans
- **Applies to "covered service providers".** Includes entities contracting with plans to provide PBM services, whether directly or through affiliates or subcontractors
- **Upfront disclosure of services and compensation**. Must be provided before entering into or renewing contracts, including direct and indirect compensation (e.g., manufacturer payments, spread pricing, claw-backs)
- **Ongoing semiannual reporting**. Providers must disclose actual compensation received every six months to support continuous fiduciary oversight
- **Audit rights for fiduciaries**. Plans must be given the ability to audit the accuracy of disclosed compensation information

PBMs – CAA 2026

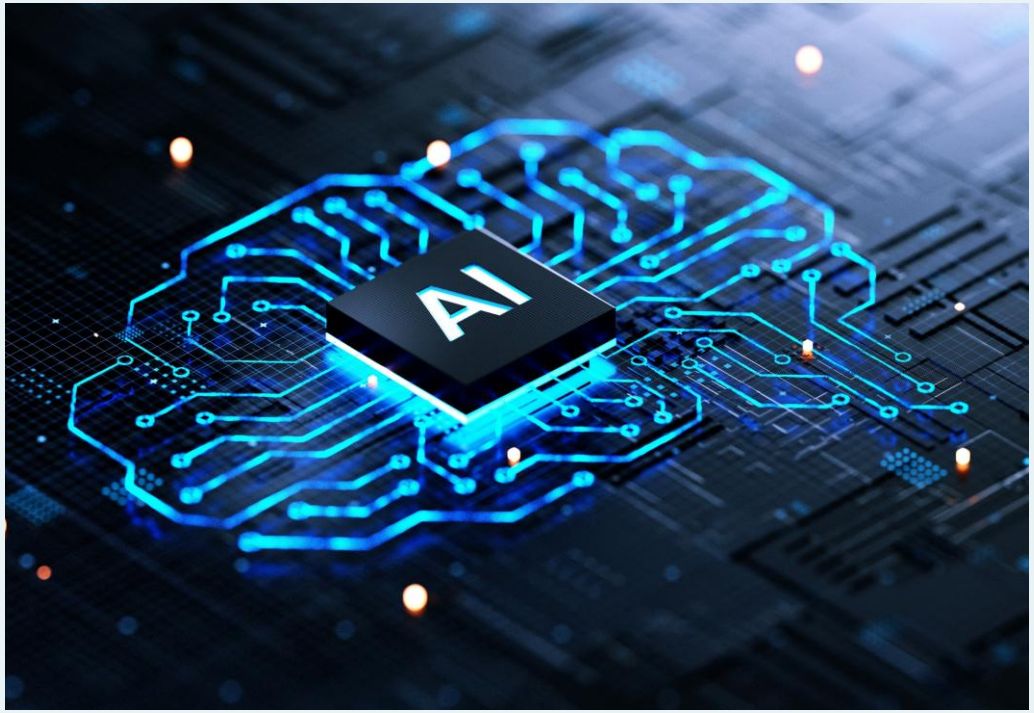
- **Expands PBM transparency requirements**. Applies to large self-insured plans, with compliance beginning in 2029 (or later based on plan year)
- **Enhanced fee disclosure requirements with penalties**. Requires detailed PBM compensation disclosures and participant-facing summaries; significant penalties for noncompliance ($10,000/day) or false reporting ($100,000/item)
- **Mandatory 100% rebate pass-through**. PBMs must remit all rebates and related compensation to the plan quarterly, with required recordkeeping and audit access
- **Stronger fiduciary oversight tools**. Includes independent annual audit rights and prohibits contractual limits on access to necessary plan information
- **Fiduciary protections with governance expectations**. Provides relief for "innocent fiduciaries" if issues are timely addressed, reinforcing the need for formal governance and documentation

PBMs - State Investigations

- **Trend**. State agencies and state attorneys general continue to investigate and bring enforcement actions against pharmacy benefit managers. Employers are affected when investigative agencies require the PBM to disclose plan specific information
- **Preemption**. Self-insured, ERISA-covered group health plans have declined to provide plan specific information claiming ERISA preemption
- **Settlements**. Louisiana settled with CVS Caremark for $45M. West Virgina settled with Express Scripts and Express Scripts agreed to reimburse pharmacies with interest and implement policy changes
- ***Pharmaceuticals Care Management Assoc. v. Bonta***. The pharmaceutical industry in California challenged a state law imposing fiduciary duties on PBMs. The California Federal District Court in the Central District dismissed the PCMA's complaint with leave to amend

Impact of AI on Health Plans and Fiduciary Duties

- **Cybersecurity**. AI tools can identify potential cybersecurity breaches. Uploading plan data to AI tools creates additional risk of unintended disclosure of personal health information
- **Duty to Monitor**. Monitor known us of AI tools in plan administration. Ask vendors and service providers how they use AI tools
  - Take advantage of the right to audit service providers.
  - Review service agreements.
  - Involve technical experts if needed.



Litigation Update

Anderson v. Intel Corp. Investment Policy Committee

- In *Anderson v. Intel Corporation Investment Policy Committee,* 137 F.4th 1015 (9th Cir. 2025), Plaintiffs sued for breach of fiduciary duty, challenging the inclusion of hedge funds and private equity funds in Intel's target dates funds
- The 9th Circuit Court of Appeals upheld the lower court's decision, finding Plaintiffs had failed to plausibly allege that the funds underperformed as compared to other similar funds, failed to state a claim for breach of prudence by causing the plans to incur higher fees, and failed to adequately plead an ERISA claim for breach of duty of loyalty
- Court noted that inclusion of hedge funds and private equity was not per se imprudent, and emphasized the need for Plaintiffs to provide specific and plausible allegations, and use meaningful comparable benchmarks when comparing performance and fees
- In January 2026, the Supreme Court granted certiorari to consider whether allegations of fund underperformance, without a meaningful benchmark, are sufficient to state a claim that an ERISA fiduciary breached the duty of prudence

DOL Amicus Brief – *Anderson v. Intel Corp. Investment Policy Committee*

- On July 10, 2026, the DOL filed an amicus brief in support of the 9th Circuit's decision in *Anderson*
- The DOL argued in the brief that contrary to the plaintiffs' claims, Intel diversified its retirement plan investment funds into these assets to make their employees' retirement income safer during market downturns, and the investment strategy the plaintiffs seek would force Intel to make significantly riskier investments for superficially higher returns
- The DOL emphasized that ERISA is a law of process, not results. Underperformance alone does not show imprudence; plaintiffs must have a "meaningful benchmark" with similar goals and strategies
- Brief is part of a broader DOL effort to curb what the agency views as overuse of ERISA litigation against plan fiduciaries

In re Quest Diagnostics ERISA Litigation

- *In re Quest Diagnostics Litigation*, 2026 WL 1783204 (3d Cir. 2026), plaintiffs alleged the Quest Diagnostics investment committee breached its fiduciary duties by failing to remove two underperforming funds from the 401(k) plan
- The 3rd Circuit Court of appeals upheld the lower courts decision, finding that the committee followed a prudent process, including quarterly meetings, retention of an outside consultant, annual fiduciary training, and direct engagement with the underperforming funds, and that this process satisfied ERISA's duty of prudence regardless of the funds' performance
- Court applied a two-step framework: First, was the process prudent, and if not, was the decision still objectively reasonable
- Court held found that the process used to assess the funds performance was reasonable, and that underperformance must be "severe and sustained" to support an imprudence claim

Target Date Fund Litigation Update

- Claims alleging breach of fiduciary duties related to Target Date Funds (Tdfs) continue to be a leading source of ERISA class action suits in 2026
- Recent wave of suits targeting American Century TDFs, with a small number of plaintiffs' firms appearing to drive most of the filings
- Suits allege a variety of complaints, including inferior performance, high investor turnover, and challenges to the TDFs' glidepath design
- *McGeathy v. Reinalt-Thomas Corp.* (D. Ariz., March 2026) (Discount Tire case): court denied a motion to dismiss, finding it plausible that fiduciaries imprudently retained American Century target date funds that lagged peer funds for more than 15 years

Trauernicht v. Genworth Fin. Inc

- In *Trauernicht v. Genworth Fin. Inc.*, 2026 WL 667917 (4th Cir. 2026), Plaintiffs alleged that Genworth Financial breached its fiduciary duties by offering and retaining BlackRock LifePath target date funds that underperformed alternative options, and the district court certified a mandatory class of participants invested in those funds since 2016
- The 4th Circuit Court of Appeals reversed the mandatory class certification, holding that ERISA claims for investment losses in defined contribution plans are individualized monetary claims that cannot be certified as a mandatory class
- Instead, classes in such cases should be certified based on a showing that common questions predominate over individual ones and that a class action is the superior method of resolving the dispute, which carries mandatory notice and opt-out rights for class members

Los Angeles County Employees Retirement Association v. County of Los Angeles --- P.3d --- 2026 WL 2147868 (Cal., Aug. 3, 2026, No. S286264)

- **Background**
- LACERA filed an action that sought to compel the County to include the employment classifications and salaries determined by LACERA in the County's salary ordinance after the County refused to do so
  - The trial court denied the writ based largely on *Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095
  - *Westley* held that Proposition 162 (a voter initiative passed in 1992 that amended Cal. Const. art. 16, § 17) did not grant the CalPERS the power to establish employment classifications and set salaries for its employees
  - LACERA appealed

Los Angeles County Employees Retirement Association v. County of Los Angeles --- P.3d --- 2026 WL 2147868 (Cal., Aug. 3, 2026, No. S286264)

- **Court of Appeal reverses the trial court**
  - Holds that the language in Cal. Const. art. 16, § 17 and the contemporaneous initiative materials establish that Proposition 162 granted the LACERA Board "plenary authority" over the "administration of the system"
  - This plenary authority includes the power to hire necessary personnel and set compensation, and that the County BOS therefore had a mandatory duty to implement LACERA's personnel decisions
  - The County petitioned the Supreme Court for review

Los Angeles County Employees Retirement Association v. County of Los Angeles --- P.3d --- 2026 WL 2147868 (Cal., Aug. 3, 2026, No. S286264)

- **The Supreme Court grants review and reverses Court of Appeal in 4-3 decision.** *Westley* is correct. Counties, not retirement boards, keep final authority over civil-service classification and salaries of retirement-system staff
  - Constitutional issue (Cal. Const., art. XVI, § 17): Prop. 162's "plenary authority" over "administration of the system" covers only asset management, investment, actuarial services, and benefit delivery — not staff pay — and section 17's subdivisions both define and limit that authority
  - **Statutory issue (CERL § 31522.1):** Boards may hire needed staff, but they are county employees; the county's only mandatory duty is to include them in salary ordinance, not to adopt board's classifications/salary figures

Los Angeles County Employees Retirement Association v. County of Los Angeles --- P.3d --- 2026 WL 2147868 (Cal., Aug. 3, 2026, No. S286264)

  - Cooperative Responsibility. “while CERL grants retirement boards the power to ‘appoint,’ or hire, necessary personnel, county governments retain final authority over their civil service classification and salaries. Such decisions are subject to judicial review for abuse of discretion, however, and a writ of mandate may issue if the county unreasonably delays or withholds its approval of the retirement board's recommendations.”

- **Key Points in Dissent**
  - CERL's 1973 amendments (AB 470) gave retirement boards authority over classification and salary setting
  - A board authorized to "appoint such personnel as are required" must be able to decide which positions are necessary and authority over "entire expense of administration" is meaningless if county controls salaries

Ventura Cnty. Employees' Ret. Assn. v. Crim. Just. Att'ys Association of Ventura County --- P.3d --- 2026 WL 2147868 (Cal., July 27, 2026, No. S283978)

- **Straddling.** For pre-PEPRA/Legacy employees, pension benefits are based partly on "compensation earnable" during a chosen 36 or 12-month final compensation period. Because a "final compensation" period can "straddle" two fiscal years, employees had often sold back unused leave in two fiscal years
- **PEPRA.** To address so-called "pension spiking", the Legislature enacts PEPRA
  - Among other things, PEPRA modified Government Code section 31461 to exclude payments for unused leave "in an amount that exceed[] that which may be earned and payable in each 12-month period during the [final compensation] period, regardless of when reported or paid."
  - Supreme Court's 2021 decision in *ACERA* affirms the constitutionality of the PEPRA legislation

Ventura Cnty. Employees' Ret. Assn. v. Crim. Just. Att'ys Association of Ventura County --- P.3d --- 2026 WL 2147868 (Cal., July 27, 2026, No. S283978)

- **VCERA Lawsuit** Following *ACERA*, VCERA filed a lawsuit seeking a judicial declaration that its newly-implemented policy that tracked the language of Government Code section 31461 and prohibited "overpayments" based on "straddling" was lawful
- **Court of Appeal affirms trial court ruling in favor of VCERA**. Reasons that clear anti-pension spiking intent of PEPRA and language in *ACERA* (that the plaintiffs argued was *dicta)* concerning Government Code section 31461 mandated this result

Ventura Cnty. Employees' Ret. Assn. v. Crim. Just. Att'ys Association of Ventura County --- P.3d --- 2026 WL 2147868 (Cal., July 27, 2026, No. S283978)

- **Supreme Court grants review and affirms Court of Appeal's decision in favor of VCERA**
- Although *ACERA* had described Government Code section 31461(b)(2) as preventing "straddling", that description wasn't central to its holding and was dicta. The Court therefore undertook a fresh statutory analysis
  - On the text, the Court found Government Code section 31461 ambiguous rather than clearly favoring either side. The Court rejected the employees' argument that "12-month period" simply meant the employee's chosen final compensation period and read "each 12-month period" as referring to the relevant annual cashout limits under the terms of employment
  - Because the statutory language was ambiguous, the Court turned to statutory purpose, which it said "conclusively" resolved the issue in VCERA's favor given PEPRA's "anti-pension spiking" purpose
  - The Court also noted that administrative concerns (e.g., letting counties predict funding obligations) also favored the retirement board
- **Concurrence by Chief Justice**

Williams v. Lawrence Livermore Nat'l Sec., LLC, N.D. Cal., No. 24-cv-07593

- After 30 years of employment, Williams were offered 3 choices of benefits: retire, or enroll in one or both of two disability programs offered by LLNS. Following consultation with two benefit personnel at LLNS, and based on their advice, Williams chose to enroll in both traditional LTD and "Defined Benefit Eligible Disability" programs. The benefit personnel led Williams to believe the second program would permit him to receive service credit for the time on disability, which would increase his pension payment upon retirement. This turned out to be incorrect. Williams sued for breach of fiduciary duty based on misrepresentation.
- LLNS moved for summary judgment, Williams cross-moved for summary judgment and equitable relief

Williams v. LLNS (con't)

- An ERISA breach of fiduciary claim based on misrepresentation is established when the plaintiff demonstrates that:
  - The defendant was an ERISA fiduciary and was acting as a fiduciary;
  - The defendant made a material misrepresentation to plaintiff; and
  - The plaintiff reasonably relied on the misrepresentation to their detriment
- LLN argued the 2 employees were not fiduciaries. The court held no – actions of employees who perform fiduciary functions can be "imputed to the delegating fiduciary" (e.g., individualized consultations with benefits advisors)
- LLNS argued making an error in counseling does not amount to material misrepresentation when plan language on the same topic is ambiguous. The court held no – fiduciaries owe an affirmative responsibility to "convey complete and accurate information material to the beneficiary's circumstance, even when a beneficiary has not specifically asked for the information"

Williams v. LLNS (con't)

- Even if plan language were ambiguous, relevant portions of plan language may be a separate breach of fiduciary duty for LLNS's failure to correct
- LLNS argued Williams should have consulted the Plan Document. Court said no – the fiduciary duty to provide complete and accurate information falls on fiduciaries, not beneficiaries
- Equitable relief:
  - Equitable estoppel remedy: Placing the plaintiff in the position as if the representations were true
  - Surcharge remedy: Placing the plaintiff in the position prior to reliance on misrepresentations
  - Trial required to prove both remedies

Williams v. LLNS (con't)

- **Key Takeaways**

Ambiguous plan language is <u>not</u> a defense to unintentional fiduciary misrepresentation

HR benefit counselors may be functional fiduciaries under ERISA section 3(21)(A)

Internally inconsistent plan provisions create litigation risk and may constitute a fiduciary breach

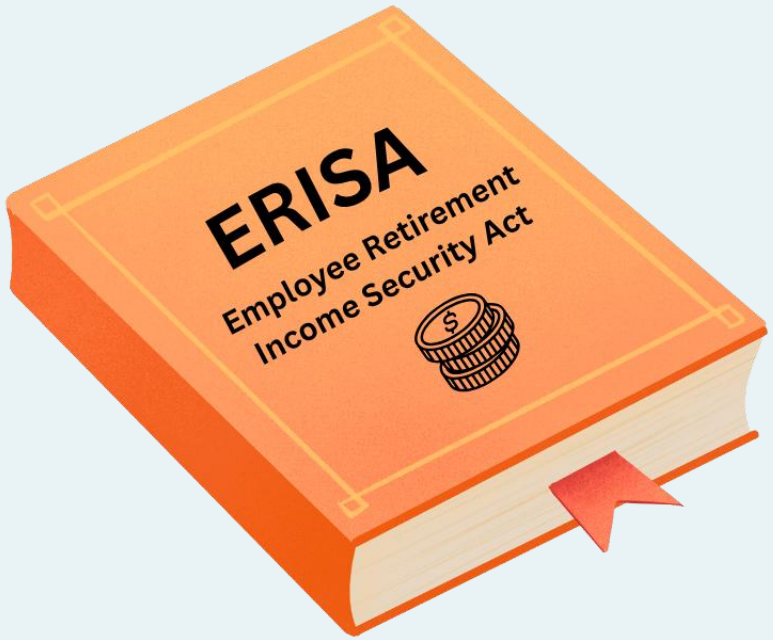
Health & Welfare Litigation

Zavislack v. Netflix, Inc. ERISA Document Disclosure Litigation

- Plaintiff Mark Zavislak sued Netflix under ERISA Section 104 seeking disclosure of claims administration agreements (CAAs) between Netflix and its third-party administrators (Collective Health Administrators, LLC, Anthem Blue Cross Life & Health Insurance, Delta Dental of California, and Vision Service Plan) and internal documents (the "Ancillary Documents")
- **Ninth Circuit's ruling**
  - Netflix had no obligation to disclose the CAAs or Ancillary Documents
  - $765 statutory penalty against Netflix vacated
- **Legal Standard**
  - ERISA Section 104 requires disclosure of documents that tell a participant "exactly where he stands with respect to the plan" — what benefits he may receive, what could preclude them, and what procedures apply. It is not a generalized disclosure law

Zavislack v. Netflix, Inc. ERISA Document Disclosure Litigation

- **CAAs and Ancillary Documents Fell Outside Section 104's Scope**
  - The four CAAs primarily governed the relationship between Netflix and those vendors providing various claims-related services, not the actual benefits or the processes Plan participants must follow to obtain them
  - The nine Ancillary Documents the plaintiff sought were either already available to him or were internal materials that had no bearing on his standing under the Plan
- **Petition for a writ of certiorari is pending at the Supreme Court**
  - *Zavislak v. Netflix, Inc.*, No. 24-4156, 2025 WL 2717422 (9th Cir. Sept. 24, 2025)



Johnson & Johnson PBM Litigation

- **First wave of welfare fiduciary litigation**
  - The lawsuit signaled an expected increase in claims alleging breaches of fiduciary duty in selecting and monitoring health plan vendors
- **Focus on PBM selection and oversight**
  - The case alleges fiduciaries failed in their duty by selecting a PBM imprudently, relying on a conflicted consultant, and not negotiating favorable terms
- **Shift from retirement plans to health plans**
  - Similar to past 401(k) fee litigation, scrutiny is now expanding to health and welfare plans, particularly vendor fees and pricing practices
- **Transparency laws are driving litigation risk**
  - New requirements under laws like the Consolidated Appropriations Act, 2021 have increased access to pricing and fee data, enabling plaintiffs to challenge fiduciary decisions
- **Dismissal is being appealed in the Third Circuit Court of Appeals**

Lewandowski v. Johnson & Johnson, No. 24-671, 2025 WL 3296009 (D. NJ Nov. 26, 2025)

Wells Fargo PBM Litigation

- Plaintiffs alleged fiduciaries failed to ensure prescription drug costs and PBM fees were reasonable
- **Prohibited transaction claim**
  - Plaintiffs argued excessive PBM administrative fees (over $25M) constituted unreasonable compensation and a prohibited transaction
- **Claims of participant harm**
  - Alleged breaches resulted in higher premiums and out-of-pocket costs for plan participants
- **Case dismissed due to lack of standing/causation**
  - Court found allegations of harm were too speculative to establish causation or concrete injury
- **Dismissal is being appealed in the Eighth Circuit Court of Appeals**

Navarro v. Wells Fargo & Co., No. 24-cv-3043, 2026 WL 591454 (D. Minn. Mar. 3, 2026)

JPMorgan Chase PBM Litigation

- **Alleged fiduciary breach in PBM management**
  - Plaintiffs claim JPMorgan mismanaged its prescription drug plan and failed to control excessive costs
- **Conflict of interest concerns**
  - Lawsuit highlights JPMorgan's business relationship with CVS as influencing plan decisions and limiting cost containment efforts
- **Failure to negotiate favorable contract terms**
  - Alleged inability to remove unfavorable ("bad") PBM contract provisions or secure better pricing structures
- **Vertical integration risks**
  - Claims JPMorgan failed to address CVS's ties to affiliated drug manufacturers, resulting in higher-cost formulary decisions
- **First PBM case to survive a motion to dismiss**

Stern v. JPMorgan Chase & Co., No. 25-cv-02097, 2026 WL 654714 (S.D.N.Y. Mar. 9, 2026)

Northwestern Breach of Fiduciary Litigation

- **Court allows health plan fiduciary case to proceed**
  - A federal judge denied Northwestern's motion to dismiss, allowing the ERISA fiduciary breach claims to move forward. The court declined to consider the settlor, rather than fiduciary, nature of the decision to offer a second medical plan option
- **Allegations of imprudent plan design and oversight**
  - Plaintiffs claim Northwestern failed to prudently select and monitor plan options and did not adequately disclose key information
- **Focus on higher premiums**
  - Participants allege they suffered financial harm by paying higher premiums for inferior plan options with no added value
- **Lower hurdle for standing**
  - Court found that paying too much for benefits alone can establish injury, even if participants received promised coverage

Barbich v. Northwestern University, No. 25-cv-06849, 2026 WL 1552506 (N.D. Ill. Apr. 2, 2026)

Guardian Flight, LLC No Suprises Act Litigation

- Two air ambulance providers sued health insurer Health Care Service Corporation (HCSC) for failing to timely pay Independent Dispute Resolution (IDR) awards under the No Surprises Act (NSA), denying ERISA benefits to plan beneficiaries, and unjust enrichment under Texas quantum meruit law
- **Fifth Circuit Affirmed Dismissal of all three claims**
  - **NSA claim:** Dismissed because no private right of action existed to enforce IDR awards
    - The NSA expressly barred judicial review of IDR awards except under specific provisions described in the Federal Arbitration Act and provides for HHS enforcement of non-compliance with the NSA's provisions

Guardian Flight, LLC No Suprises Act Litigation

- **ERISA claim:** Dismissed for lack of standing. Providers, as assignee of the individual plan beneficiaries, failed to show that the beneficiaries suffered a concrete injury
  - The NSA shielded beneficiaries from any financial liability, so they have not suffered, and could not suffer, any concrete injury
- **Quantum meruit claim:** Dismissed because the providers failed to allege they provided a direct benefit to HCSC, as the services were rendered for the patients, not HCSC.

- On January 12, 2026, the Supreme Court denied the providers' petition for a writ of certiorari

Guardian Flight, L.L.C. v. Health Care Service Corporation, 140 F.4th 271 (5th Cir. 2025), *cert. denied*, 146 S.Ct. 1493 (2026)

Annual Review of Plan Document and Operational Compliance

Amendment Deadlines

- Private sector employers must generally amend their plans for SECURE Act, SECURE 2.0 Act, and CARES Act this year
- But there are no required amendments for governmental plans this year, even if they must implement changes operationally
- Notice 2024-2, which remains in effect, extended amendment deadlines for the Acts until:
  - 12/31/29 for governmental plans
  - 12/31/26 for non-governmental and non-collectively bargained qualified plans
  - 12/31/28 for applicable collectively bargained qualified plans
  - 12/31/29 for public school 403(b) plans (12/31/26 for non-public school plans; 12/31/28 for applicable collectively bargained plans of 501(c)(3) organizations)

Operational Compliance List

- The IRS publishes an Operational Compliance List that it updates periodically to help plan sponsors achieve operational compliance with law changes
- The IRS last updated the OC List in 2023, and it doesn't include routine annual, monthly or other periodic changes
- The IRS hasn't added any changes to the OC List effective in 2026 yet, and it doesn't include any SECURE 2.0 Act changes yet
- Most of the SECURE 2.0 Act changes have already become effective
  - Notable Exception: the Roth catch-up contribution requirement is effective in 2026

Operational Compliance Required Before SECURE 2.0 Amendment Deadline

- Governmental plan sponsors don't have to amend their plans this year even if they're required to implement changes operationally
  - Extended amendment deadline remains generally 12/31/29
- **But** plans must comply operationally with changes effective in 2023, 2024, 2025, and now 2026
  - If you haven't already made them, changes in participant communications may be needed to avoid confusion

SECURE 2.0 Act Additional Operational Compliance Concerns for 2026

- Age-50 catch-up contributions for certain highly paid participants must be Roth
  - The IRS published final regulations re Roth catch-up contributions on 9/16/25
  - Highly paid: more than $150,000 in Social Security wages in prior year (as indexed in 2025 for 2026))
  - Doesn't apply if employee had no Social Security wages for prior year (e.g., certain governmental employees)
- Notice 2026-13 – Updated safe harbor notices for SECURE 2.0

Operational Compliance—Continuous Efforts

- Review operational compliance with continuous requirements annually:

Have you updated the plan's Code section 402(f) notice per IRS guidance?

Have you limited contributions or benefits in accordance with Code section 415?

Have you limited compensation used to calculate contributions or benefits under Code section 401(a)(17)?

Do you have procedures in place to verify compliance with changes made to the Code section 401(a)(9) required minimum distribution rules?

Have you established procedures to document error self-correction compliance with EPCRS rules for future audit?

Plan Operational Compliance –IRS Pilot Audit Program Still In Place

- 2nd Phase of IRS Pilot Audit Program began in 2024
- Make sure appropriate representatives have been alerted to notify leadership immediately of receipt of a plan audit notice
- IRS pilot program gives the plan only 90 days to make all needed corrections following receipt of notice or full audit begins

Summary of Annual Review Process

Review information on monitoring of federal and state law tax and fiduciary compliance requirements with plan counsel

Determine any required or desired plan document changes

Plan for any required or desired changes in coming year that could affect operational requirements

Review best practices (look back at what you learned today and at other fiduciary education programs or reading you have done) and recommend adoption of those that are reasonable and appropriate for your plan

Summary of Annual Review Process

Verify that any periodic reports due to an appointing authority to support appropriate oversight have been filed

Document reviews of vendor performance completed during year (administrative, legal and investment)

Determine any necessary or desirable participant communications (including updates to your website)

Have counsel review with fiduciaries (try to maintain attorney-client privilege for discussion) any areas of risk or exposure for litigation that should be addressed

Thank You!