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Client Alert

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ERISA Class Actions Filed Against Duke, Johns Hopkins, MIT, NYU, Penn, Vanderbilt and Yale

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Seven new ERISA class actions were filed against universities with ERISA 401(k) and 403(b) benefit plans (*Clark v. Duke University, Kelly v. The Johns Hopkins University, Tracey v. Massachusetts Institute of Technology, Sacerdote v. New York University, Sweda v. The University of Pennsylvania, Cassell v. Vanderbilt University and Vellali v. Yale University*). All seven lawsuits were filed by the same plaintiffs law firm. By filing these seven cases in three days, the plaintiffs' counsel signaled that they are now targeting universities with ERISA benefit plans.

The Allegations

The cases are very similar to ERISA class actions pending across the country. The cases are brought by current or former participants in 401(k) or 403(b) plans alleging that plan sponsors and plan fiduciaries made imprudent or disloyal decisions that reduced the value of participants' accounts. Under ERISA, plan sponsors and plan fiduciaries owe duties of prudence and loyalty to plan participants, and those duties require them to act in the best interests of plan participants. These class-action lawsuits challenge decisions about the investment options offered to plan participants and the amount of fees that plans and individual participants pay to third-party service providers.

In particular, the lawsuits allege that the defendant plan sponsors and fiduciaries:

- Failed to take steps to ensure that the fees paid were reasonable;
- Could have obtained less-expensive administrative and other services for plan participants, but did not;
- Breached their duties of prudence by failing to solicit competitive bids from other service providers;
- Breached their duties of loyalty by hiring a third-party service provider with some relationship to the sponsor company or other fiduciaries;
- Failed to ensure that only prudent investment options were offered to participants;
- Failed to monitor the investment options and remove those that underperformed benchmarks; and
- Charged excessive expenses as compared to similar options available in the marketplace.

What These New Cases Mean

These cases challenge the process that plan fiduciaries employ in selecting service providers, evaluating fees and expenses, and overseeing how investment options are selected and maintained. Recently, a number of these types of cases settled without the courts determining whether fiduciaries must remove investment options that do not meet or exceed benchmarks; whether fiduciaries have to select service providers who offer the lowest fees and expenses; and whether fiduciaries must scour the market for alternative investment options.

It is advisable for colleges and universities with 401(k) or 403(b) plans to review the way fee and investment decisions are made and how that process is documented. The process and documentation should reflect prudent and loyal decision-making, the details of which vary depending on the type of plan, number of participants, and plan terms.

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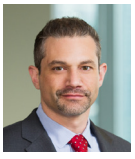

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