

The latest supreme court decision *Hughes v. Northwestern* – what Plan Sponsors need to know



Once again the Supreme Court has made it clear that a prudent fiduciary process is required of all ERISA-governed retirement plans. The landmark case, *Hughes v. Northwestern*, addressed complicated issues surrounding how the fiduciary process is a requirement for retirement plans. The big takeaway for those that manage a retirement plan is that there are no shortcuts, and the fiduciary process is non-negotiable.

More specifically, the Supreme Court found that plan sponsors need to have in place a process to ensure that **each and every investment available in a plan's lineup is independently prudent.**

Buffet of options doesn't mean protection

A point made at oral argument puts it into focus: it is no consolation that other food at the buffet is fine if one eats an item that causes food poisoning. In so ruling, the Supreme Court rejected the reasoning by the lower courts that having a large lineup of funds of many varieties could insulate a fiduciary from a claim of imprudence.

Litigation watch: Is your 401(k) plan next?

The *Hughes* decision comes at a time of greatly increased litigation around ERISA fiduciary issues as related to investments, fees and other fiduciary issues. Many in the retirement plan world were hoping for a decision that would have made it harder for plaintiffs' lawyers to bring cases against plan sponsors.

Unfortunately, that did not happen; instead, the unanimous decision by the eight justices who decided the case could have had a result of even more cases being filed.¹ It's possible that some plaintiffs' firms have been holding back the filing of cases pending the decision. Now that it's been decided, the flood gates could be opening even wider.

What should plan sponsors be doing now?

Doubling down on having a process in place that meets the procedural prudence requirements of ERISA to ensure you are making prudent substantive choices is in the best interest of your plan participants. This makes you less of a target and even if sued, it's the only thing that has been demonstrated to win these cases.

This can be a daunting undertaking if you do not have the knowledge or skill internally to address these issues. But the good news is this is a task you can outsource to a trusted advisor who specializes in helping retirement plans.

Our consultants are skilled at helping public and private organizations better understand their fiduciary responsibilities. Contact **Stu Herskowitz** at **860.856.2071** or sherskowitz@hhconsultants.com to start a conversation.

¹ Justice Amy Coney Barrett recused herself because she was a sitting Seventh Circuit judge which is the circuit court that the case was being appealed from.

Investment advice is offered through Hooker & Holcombe Investment Advisors, Inc. (“HHIA”), an SEC Registered Investment Adviser. This material was created for educational and informational purposes only and is not intended as ERISA, tax, legal or investment advice. If you are seeking investment advice specific to your needs, such advice services must be obtained on your own separate from this educational material. ©2022 401k Marketing, LLC. All rights reserved. Proprietary and confidential. Do not copy or distribute outside original intent.