

Is Your Company's 401(k) Plan as Good as It Could Be?

Two recent court rulings may make you want to double-check.

Provided by The William Newby Agency

How often do retirement plan sponsors check up on 401(k)s? Not as often as they should, perhaps. Employers need to be especially vigilant these days.

Every plan sponsor should know about two recent court rulings. One came from the Supreme Court in 2015; another, from the U.S. District Court for the Central District of California in 2017. Both concerned the same case: *Tibble v. Edison International*.

In *Tibble v. Edison International*, some beneficiaries of the Edison 401(k) Savings Plan took Edison International to court, seeking damages for losses and equitable relief. The plaintiffs contended that Edison International's financial advisors and investment committee had breached their fiduciary duty to the plan participants. Twice, they argued, the plan sponsor had added higher-priced funds to the plan's investment selection when near-identical, lower-priced equivalents were available.¹

Siding with the plan participants, the SCOTUS ruled that under ERISA, a plaintiff may initiate a claim for violation of fiduciary duty by a plan sponsor within six years of the breach of an ongoing duty of prudence in investment selection.¹

The unanimous SCOTUS decision on *Tibble* (expressed by Justice Stephen Breyer) stated that "cost-conscious management is fundamental to prudence in the investment function." This degree of alertness should be applied "not only in making investments but in monitoring and reviewing investments. Implicit in a trustee's [plan fiduciary's] duties is a duty to be cost-conscious."^{2,3}

Two years later, the U.S. District Court ruled that Edison International had indeed committed a breach of fiduciary duty regarding the selection of all 17 mutual funds offered to participants in its retirement plan. It also stated that damages would be calculated "from 2011 to the present, based not on the statutory rate, but by the 401(k) plan's overall returns" during those six years.³

The message from these rulings is clear: the investment committee created by a plan sponsor shoulders nearly as much responsibility for monitoring investments and fees as a third-party advisor. Most small businesses, however, are not prepared to benchmark processes and continuously look for and reject unacceptable investments.

Do you have high-quality investment choices in your plan? While larger plan sponsors have more "pull" with plan providers, this does not relegate a small company sponsoring a 401(k) to a substandard investment selection. Employees are smart and will ask questions sooner or

later. “Why does this 401(k) have only one bond fund?” “Where are the target-date funds?” “I went to Morningstar, and some of these funds have so-so ratings.” Questions and comments like these are reasonable and surface when a plan’s roster of investments is too short.

Are your plan’s investment fees reasonable? Employees can deduce this without checking up on the Form 5500 you file – there are websites that offer some general information as to what is and what is not acceptable. Most retirement savers read up on this with time, and most know (or will know) that a plan with administrative fees pushing 1% is less than ideal.

Are you using institutional share classes in your 401(k)? This was the key issue brought to light by the plan participants in *Tibble v. Edison International*. The U.S. District Court noted that while Edison International’s investment committee and third-party advisors placed 17 funds in its retirement plan, it “selected the retail shares instead of the institutional shares, or failed to switch to institutional share classes once one became available.”³

Institutional share classes commonly have lower fees than retail share classes. To some observers, the difference in fees may seem trivial – but the impact on retirement savings over time may be significant.³

When was the last time you reviewed your 401(k) fund selection & share class? Was it a few years ago? Has it been longer than that? Why not review this today? Call in a financial professional to help you review your plan’s investment offering and investment fees.

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Citations.

1 - faegrebd.com/en/insights/publications/2015/5/supreme-court-decides-tibble-v-edison-international [5/18/15]

2 - cpajournal.com/2017/09/13/erisas-reasonable-fee-requirement/ [9/13/17]

3 - tinyurl.com/yd8s2rq3 [8/17/17]