

News

# Allison Itami Joins PLANSPONSOR to Discuss Recently Expanded Retirement Asset Protections

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**PUBLISHED**

01/11/2022

**SOURCE**

PLANSPONSOR

**SERVICES**

Principal [Allison Itami](#) was quoted in a recent *PLANSPONSOR* article where she discussed retirement plan court rulings that add increased protections for participant funds in the case of particular circumstances, such as divorce, bankruptcy, job changes, and more.

Recent court decisions have expanded on the protections provided in some more specific circumstances. The treatment of retirement savings in bankruptcy does come up occasionally, but people often don't realize how different situations can lead to different outcomes, says Itami.

Itami notes that recommendations concerning rollovers of retirement plan assets have been a hot topic in the advisory industry. For reference, the Financial Industry Regulatory Authority ("FINRA")'s Regulatory Notice 13-45 reminds advisers of factors to consider when making a recommendation to roll over retirement plan assets to an individual retirement account ("IRA"). The notice says, "Generally speaking, plan assets have unlimited protection from creditors under federal law, while IRA assets are protected in bankruptcy proceedings only. State laws vary in the protection of IRA assets in lawsuits." Itami says this is the basis of the idea that retirement savings are safer in an ERISA plan.

In the *Penfound v. Ruskin* case, Itami says it is notable that the 6th Circuit didn't mention ERISA anywhere in its opinion; it was not a factor. Even though the appellate court had previously allowed for 401(k) contributions to be considered "current monthly income" and protected from debtors in *Davis*, in *Penfound* it did not allow it because the petitioner was not making contributions in the six months prior to filing bankruptcy. "It's about continuing to make contributions," Itami says.

"The court said it didn't care that the petitioner had changed jobs to an employer that didn't offer a plan, meaning the petitioner could not make contributions," she adds. "This is timely and interesting considering the number of people who are changing jobs right now."

[Click here](#) to read the article.