

Publications

DOL's About-Face on Advancement of Fees Leaves Heads Spinning

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The Department of Labor (DOL) has long recognized that attracting and retaining qualified individuals to serve as plan fiduciaries is an important public policy goal. And for 30 years, in furtherance of this goal, DOL has taken the position that under the Employee Retirement Income Security Acts of 1974, as amended (ERISA), a plan may, within certain guidelines, advance defense costs to a plan fiduciary facing a claim for breach of fiduciary duty.

DOL seemingly reversed its decades-old position in early 2009. In *Johnson v. Couturier*, DOL urged the Court of Appeals for the Ninth Circuit to affirm the denial of advancement of defense costs to alleged fiduciaries. DOL's position and the *Johnson* ruling have created a new and uncertain legal landscape. The attached article highlights particular areas of concern for plan fiduciaries.

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