

## Article

# Employer-sponsored health plans: Navigating mounting legal risk for plan sponsors

## Article details

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## Key contacts



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ERISA litigation regarding the management and administration of employer-sponsored 401(k) plans has skyrocketed over the past decade, with the plaintiffs' bar filing over 500 cases alleging that employers breached their fiduciary duties by, among other things, retaining service providers that charged the plan too much in fees, offering underperforming investment options, and violating plan terms regarding the use of forfeited employer contributions.

The level of exposure in such cases can be significant, with settlements often in the millions of dollars and, in some cases, the tens of millions. In recent years, the plaintiffs' bar has started to turn its attention to employer-sponsored health plans. In the past five years alone, the number of cases targeting the management and administration of health plans has grown from a small handful to nearly 100, with cases challenging the imposition of premium surcharges for tobacco use making up the vast majority of the newly-filed cases.

While the number of health plan suits is still relatively small in comparison to the tsunami of 401(k) plan filings, these early cases may serve as a warning sign that a wave of ERISA class action litigation regarding the management and administration of health plans—similar in scope to what we are now witnessing with 401(k) plans—is right around the corner.

This article provides background regarding employer-sponsored health plans and a summary of the primary theories of liability that plaintiffs' firms have sought to advance.

## Background regarding employer-sponsored health plans

Many employer-sponsored health plans are self-funded, meaning that employees pay monthly premiums and out-of-pocket cost share (such as deductibles, copays, and coinsurance) at the time they incur a claim. The employer pays the balance of the health plan's expenses, meaning that the employer assumes the financial risk of paying the total amount of claims.

Employer-sponsored health plans are governed by ERISA. As a result, when an employer manages or administers its health plan, it is subject to ERISA's fiduciary standards. That is, the employer is required to manage and administer the plan prudently and in the best interest of participants.

## Types of Health Plan Fee Cases

### Litigation regarding prescription drug costs

In recent years, plaintiffs' firms have filed a series of putative class actions alleging that participants overpaid for their health coverage because their employer failed to prudently manage the health plan's pharmacy benefit manager or "PBM." According to these class actions, the health plan paid the PBM too much in fees and the PBM overcharged the plan and its participants for certain prescription drugs. At their core, these cases attack common prescription drug pricing arrangements and plan design features.

The viability of the legal theories supporting these new lawsuits is uncertain. Courts dismissed two of these cases on the basis that the plaintiffs failed to establish any element of Constitutional standing to sue—that is, (1) an injury in fact, (2) that was caused by the employer's alleged fiduciary breach, and (3) that could be redressed by a favorable court order.<sup>[1]</sup>

The courts emphasized that the plaintiffs received all benefits to which they were entitled under the health plan's terms and there was no risk that the plaintiffs would not receive their benefits in the future. The courts further held that any link between the cost of coverage and the costs charged by the plan's PBM was speculative because the employers retained complete authority under the terms of their respective plans to determine how much funding they contributed to the health plans' costs. The plaintiffs in both cases have appealed the district court decisions, and we anticipate that appellate courts will issue decisions in these cases in the next year.

The court in a third case allowed some of the plaintiffs' claims to proceed.<sup>[2]</sup> The court found that the plaintiffs' allegations that they overpaid in out-of-pocket costs for prescription drugs established an "injury in fact" sufficient to confer standing to sue. The court further found that the plaintiffs sufficiently alleged that the employer entered into a transaction prohibited by ERISA when it entered into a services contract with the plan's PBM because the plaintiffs claimed that the plan overpaid for the PBM's services. The litigation of this case is ongoing.



## Litigation regarding the pricing of health plan coverage options

Plaintiffs have also filed a handful of putative class action lawsuits against employers alleging that participants overpaid for their health coverage on the basis that the coverage option they selected provided no financial benefit in comparison to other coverage options offered by their employer's plan. Like many employers, the employers named as defendants in these lawsuits offered their employees multiple coverage options from which they could choose to purchase coverage. The coverage options included (1) an option with higher premiums but lower cost-sharing obligations at the time the employee incurred a claim, and (2) a high-deductible option with lower premiums and higher cost-sharing obligations.

The plaintiffs have asserted breach of fiduciary duty claims, as well claims based on the employers' alleged failure to disclose that there is no financial benefit to electing the higher premium coverage option.

These cases have drawn an analogy between the investment options offered in a 401(k) plan and the health coverage options offered by a health plan. As with challenges to the fees associated with 401(k) plans, which often claim that the employer or the committee administering the 401(k) plan should have picked different investment options that had cheaper fees or better performance, so too these health fee cases present similar challenges to the employer's selection of the coverage options offered by its health plan.

## Voluntary benefits litigation

Plaintiffs recently filed a series of cases against employers and insurance brokers claiming that participants paid too much in premiums for voluntary benefits insurance coverage. Voluntary benefits insurance coverage is intended to provide financial security when an adverse health event or accident occurs. Unlike health coverage, voluntary benefits coverages typically are fully insured, meaning that the insurance carrier bears the risk of paying claims.

Employers make the coverages available for purchase, but employees generally pay the entire cost of the coverage.

The plaintiffs claim that they paid too much in premiums because the brokers who placed the underlying insurance policies were paid excessive commissions by the insurance carriers. The plaintiffs' claims are built on the premise that broker commissions impact participant premiums "dollar-for-dollar."

These cases are in their early stages. We anticipate that district courts will determine whether the plaintiffs have plausibly alleged claims for relief within the next year.

## Tobacco premium surcharge litigation

By far the largest source of health plan litigation concerns challenges to employer's imposition of premium surcharges on tobacco users. Plaintiffs have filed nearly 90 lawsuits against employers under this legal theory, as plaintiffs' firms attempt to recoup purported "overpayments" for coverage.

The key issue in these cases is whether employers can prospectively remove the premium surcharge when the participant completes a wellness program's "reasonable alternative standard," which typically is a tobacco cessation course. Plaintiffs have argued that employers are required to provide retroactive reimbursement of premium surcharges—that is, reimbursement of the total amount of premium surcharges they have paid during a plan year—upon completion of the tobacco cessation course.

Plaintiffs also claim that the employers inappropriately used the premium surcharges to offset their obligations to fund health plans and that the employers failed to provide adequate notice of how participants could obtain removal of the premium surcharge.

So far, district courts have reached varying conclusions on whether the plaintiffs' allegations state viable claims for relief. In the midst of this uncertainty regarding the viability of the plaintiffs' claims, the U.S. Department of Labor ("DOL"), which has the authority to enforce ERISA, issued guidance stating that it will not take enforcement action against an employer that only provides prospective removal of a tobacco premium surcharge when a participant completes a tobacco cessation course. The DOL also clarified the categories of information that employers must disclose regarding tobacco premium surcharges.

## Looking forward

As the plaintiffs' bar pushes new theories of liability tied to health and welfare coverage, we anticipate that the volume of cases challenging the costs of such coverage will only increase, and could even crest into a new wave of litigation akin to what has happened with 401(k) plans. Plan sponsors and fiduciaries therefore may find it helpful to track these lawsuits, the defenses asserted, and the ultimate outcomes and lessons learned from them in navigating an area of mounting legal risk.

As litigation risk in employer-sponsored health plans continues to grow, plan sponsors should proactively assess how well their financial protections and governance practices align with this evolving exposure landscape:

- Evaluate whether fiduciary liability insurance limits and coverage terms are sufficient for potential class action exposure.
- Benchmark coverage and stress-test limits against emerging health plan litigation scenarios.
- Strengthen governance practices, including vendor oversight, documentation, and fiduciary decision-making processes.

[1] *Navarro v. Wells Fargo & Co.*, No. 24-cv-3043, 2026 WL 591454 (D. Minn. Mar. 3, 2026); *Lewandowski v. Johnson & Johnson*, No. 24-671, 2025 WL 3296009 (D.N.J. Nov. 26, 2025).

[2] *Stern v. JPMorgan Chase & Co.*, No. 1:25-cv-02097, 2026 WL 654714 (S.D.N.Y. Mar. 9, 2026).

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