



Court Acknowledges ERISA Section 404(c) Safe Harbor for Plan Fiduciaries

Client Advisories

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Recent court cases have highlighted the importance of compliance with ERISA Section 404(c) in protecting fiduciaries from claims concerning investment losses and high fees.

In *Renfro v. Unisys Corporation*, the U.S. District Court for the Eastern District of Pennsylvania found that fiduciaries of the Unisys 401(k) Plan were not liable for what Plan participants claimed were excessive fees because the Plan offered a broad range of investment alternatives and met the requirements of ERISA Section 404(c). The Court granted summary judgment in favor of the Plan fiduciaries, finding that compliance with the specified provisions is an affirmative defense to claims for losses related to Plan investments.

A District Court in Illinois similarly found fiduciaries were protected by the safe harbor of ERISA Section 404(c). In *Rogers v. Baxter International, Inc.*, the Court found that Plan participants who were fully informed about the diverse investments available to them could not hold Plan fiduciaries liable for losses resulting from those participants' failure to diversify their investments.

Generally, Plan fiduciaries may seek the protection of ERISA Section 404(c) where the Plan at issue is an "individual account plan," such as a 401(k) or profit sharing plan that holds each participant's assets in a separate account, under which a participant has the opportunity to and does in fact exercise control over assets in his own account. ERISA and the regulations define exactly what constitutes exercise of control and other factors that must be present in order for fiduciaries to be relieved of liability for plan investment losses. This section of ERISA also governs the use of default investments.

Current case law demonstrates the importance of complying with ERISA's fiduciary protection rules. Many employers believe their plans are compliant because they offer numerous investment alternatives. However, the rules provide more detailed guidance that must be followed in order to protect fiduciaries to the full extent of the law.

If you would like to determine how to bring your plan into compliance with ERISA Section 404(c), or if you want to ensure you are fulfilling your responsibility as a plan fiduciary, we can help. Contact our Employee Benefits

and Executive Compensation practice group by calling or emailing Nancy Wasch at 215-246-3106 nwasch@archerlaw.com or **Gerry Rigby** at 215-246-3160 grigby@archerlaw.com and ask about our fiduciary audit services.

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