



Supreme Court settles dispute over ERISA statute of limitations

By Mercer's Brian Kearney, Margaret Berger and Ellen Stone
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In a highly anticipated decision, the US Supreme Court has unanimously ruled that an employer's disclosure of an alleged fiduciary breach isn't enough to start ERISA's three-year statute of limitations (*Intel Corp. Inv. Policy Comm. v. Sulyma*, No. 18-1116 (U.S, Feb. 26, 2020)). Instead, the three-year period starts when the plaintiff actually learns of the alleged breach. The decision, which resolves a decade-long split in the US circuit courts of appeals, may be unwelcome news to some employers.

ERISA's 'actual knowledge' standard

The plaintiff claimed the fiduciary committee for Intel's 401(k) and profit-sharing plans acted imprudently by overinvesting in hedge funds and other alternative investments. Intel argued ERISA's statute of limitations barred the claim because the company made multiple disclosures about the investments — in summary plan descriptions, qualified default investment alternative notices and "fund fact sheets" — on two internal company websites more than three years before the plaintiff filed the suit. But the plaintiff testified that he never read the disclosures, despite admitting he might have accessed the websites 68 times while working for the company.

An ERISA fiduciary breach claim is untimely if brought more than six years after the breach occurred or three years after the plaintiff gains "actual knowledge of the breach or violation." (Intel raised only the three-year limitations defense.) ERISA does not define "actual knowledge" for this purpose. Until now, the Supreme Court hasn't provided an authoritative interpretation.

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The Supreme Court disagreed with Intel that simply making the disclosures available is sufficient to impart actual knowledge of the alternative investments. Such an interpretation, said the court, would create a standard based on “constructive knowledge” — that is, knowledge that a reasonably diligent person would have learned from available resources. ERISA requires “actual knowledge,” which means what it plainly says: The statute of limitations starts when the plaintiff *actually* becomes aware of the alleged breach. If the plaintiff never read the disclosures, then he couldn’t have actual knowledge of the contents.

Impact of decision

The decision may significantly weaken the three-year statute of limitations, since plaintiffs can simply deny that they ever read information available to them — effectively leaving employers with only the six-year statute of limitations for stale fiduciary claims. However, the decision isn’t a ruling that the plaintiff’s claim against Intel was timely. The district court had granted summary judgment in favor of Intel based on the company’s three-year statute-of-limitations argument. The 9th Circuit reversed that decision, finding the plaintiff’s testimony that he never read the disclosures created a factual dispute about when he had actual knowledge of the alternative investments. The case now heads back to the district court, which will determine when the plaintiff gained actual knowledge of the alleged breach.

The Supreme Court’s decision also resolves a split in the circuit courts. While several other circuit courts took the same position as the 9th Circuit, the 6th Circuit held in 2010 that failing to read plan documents will not shield a participant from having actual knowledge of the documents’ terms (*Brown v. Owens Corning Inv. Review Comm.*, 622 F.3d 564 (6th Cir. 2010)).

Employer considerations

Intel argued that requiring employers to show that plaintiffs actually knew of an alleged breach weakens the three-year statute of limitations. The Supreme Court acknowledged this may be true, but wasn’t persuaded that this outcome warranted a different interpretation of ERISA. Rather, the court said it’s up to Congress to decide if policy considerations require a knowledge standard that’s more favorable to employers.

But the court also noted that employers still have all of the usual ways to prove actual knowledge in litigation. Plaintiffs will have to testify — under oath — that they did or did not read disclosures about an alleged breach. Employers can use circumstantial evidence to show actual knowledge — including, for example, evidence that the disclosure was made, electronic records that the plaintiff viewed the disclosure and any actions apparently taken by the plaintiff in response to the disclosure. Additionally, plaintiffs can’t evade the actual knowledge standard through “willful blindness.”

In anticipation of potential future litigation, employers might consider ways to confirm employees have received and read plan disclosures. For example, if providing electronic disclosures, employers could

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request an electronic acknowledgement before letting participants read the document. Such an acknowledgement still might not conclusively show an employee had actual knowledge of all of a document's contents, since there's no guarantee — especially with a long document like an SPD — that the employee read the document in its entirety. But employers may want to consider these or other measures, since the Supreme Court said these types of circumstantial evidence are relevant to determining if an employee had actual knowledge of information.

Related resources

Non-Mercer resources

- [Intel Corp. Inv. Policy Comm. v. Sulyma](#), No. 18-1116 (U.S. Feb. 26, 2020)
- [Sulyma v. Intel Corp. Inv. Policy Comm.](#), 909 F.3d 1069 (9th Cir. 2018)
- [Brown v. Owens Corning Inv. Review Comm.](#), 622 F.3d 564 (6th Cir. 2010)

Mercer Law & Policy resources

- [High court will hear Intel's fiduciary breach statute-of-limitations case](#) (June 11, 2019)
- [9th Circuit rewards ignorance in ERISA fiduciary breach statute-of-limitations case](#) (Feb. 13, 2019)

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