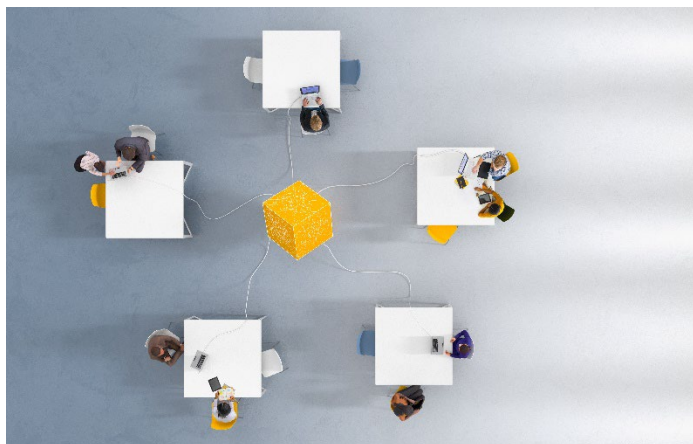


The Retirement Times

Portability Services Network Expands Impact



According to a recent release, the Portability Services Network (PSN), which began with three of the biggest recordkeepers in the country just over a year ago, has now grown to include three additional providers, covering over 15,000 retirement plans and 5 million members.

For employees with balances under \$7,000, PSN, led by Robert L. Johnson's Retirement Clearinghouse LLC, allows the automated transfer of retirement funds. The savings from an employee's prior workplace defined contribution

plan or safe harbor IRA are automatically moved to their new plan if they change jobs and their new employer's plan is included in the network.

The goal of this approach is to decrease the number of cash-outs and keep investors from losing sight of their retirement assets. According to Retirement Clearinghouse research, auto-portability for all plans and recordkeepers could save the retirement system \$1.6 trillion over the course of 40 years.

The PSN currently has Alight, Vanguard, and Fidelity Investments as active recordkeepers. While TIAA and Principal Financial Group are scheduled to go live later in 2025, Empower is scheduled to join in January 2025. More plan sponsors are being aggressively encouraged to join by the network.

In a statement, Johnson, chairman of Retirement Clearinghouse and PSN, stated, "Auto-portability was conceived as an innovation to benefit minority and women savers, and it is immensely gratifying to witness its coming to fruition."

PSN has finished 549 auto-portability transactions as of December 1st, while 7,841 more are still pending. After a match is confirmed, the auto-portability process takes roughly 60 days, and participants usually become eligible for required dividends 30 to 90 days after being terminated from their jobs.

By linking users' active accounts with other tax-advantaged accounts with less than \$7,000 and transferring the funds to the active account, the network serves as a clearinghouse. Although they profit from keeping assets on their platforms, PSN recordkeepers do not charge participants for enabling these transactions.

The Investment Company Institute reports that as of June 30, 2024, \$11.3 trillion was held in U.S. defined contribution plans. The PSN is a big step in simplifying retirement savings management and protecting members' financial futures.

Note: It is prudent to note that though the PSN has great potential for the retirement plan industry, it does pose additional fiduciary responsibilities. Joining the PSN puts additional notice requirements on employers. Further, plan sponsors must appoint a plan official as a fiduciary responsible for monitoring transfers into the plan and confirming that amounts received are invested properly. We are still awaiting additional guidance from the DOL regarding any safe harbors around the PSN.

Sources:

<https://www.plansponsor.com/workplace-plan-portability-network-supports-5m-participants/>

DOL and IRS Provide Hurricane Relief Guidance



The Department of Labor (DOL), in partnership with the Internal Revenue Service (IRS), released a statement in November detailing disaster relief measures for employee benefit plans, participants and sponsors affected by Hurricane Helene, Tropical Storm Helene and Hurricane Milton. While the guidance applies broadly to health, welfare and retirement plans, the following provisions are specifically relevant to retirement plan sponsors and participants.

Relief for Retirement Plan Sponsors

The relief measures introduced by the DOL and IRS aim to ease compliance burdens, offering flexibility and guidance to help sponsors maintain operations and support participants during this challenging time.

- Extended deadlines for ERISA compliance. Sponsors are granted additional time to provide required documents, such as benefit statements, annual funding notices and other ERISA disclosures. The Relief Period, which varies by state and FEMA designation, gives sponsors flexibility to comply as soon as administratively practicable while ensuring participants remain informed.
- Filing extensions for required forms. Filing deadlines for critical documents such as Form 5500 and Form M-1 are extended, providing relief for sponsors managing disruptions caused by the disasters. This extension helps sponsors meet ERISA and Internal Revenue Code requirements without penalties.
- Guidance on plan loans and participant contributions. Sponsors who face challenges in managing participant loans and contributions can rely on compliance assistance outlined in the EBSA Disaster Relief Notice. This guidance ensures participant accounts are accurately managed, provided sponsors document their efforts and act in good faith.
- Access to FAQs for practical support. Sponsors can consult detailed FAQs issued by the DOL for practical guidance on implementing the relief measures, understanding compliance obligations and addressing challenges during the Relief Period.

Relief for Retirement Plan Participants

The DOL and IRS guidance includes provisions designed to give participants the time and resources needed to safeguard their retirement savings while managing the personal impact of these emergencies.

- Extended deadlines for claims and appeals. Participants have additional time to file benefit claims and appeal adverse determinations. The Relief Period, excluded from these deadlines, helps ensure participants do not lose access to retirement benefits due to disaster-related delays.
- Flexibility for loan repayments. Participants affected by the disasters can benefit from leniency in meeting plan loan repayment deadlines during the Relief Period, protecting them from penalties caused by unavoidable delays.
- FAQs to support participants. The DOL's FAQs provide participants with clear guidance on their rights, adjusted deadlines and available relief measures to help them navigate challenges during the disaster recovery period.

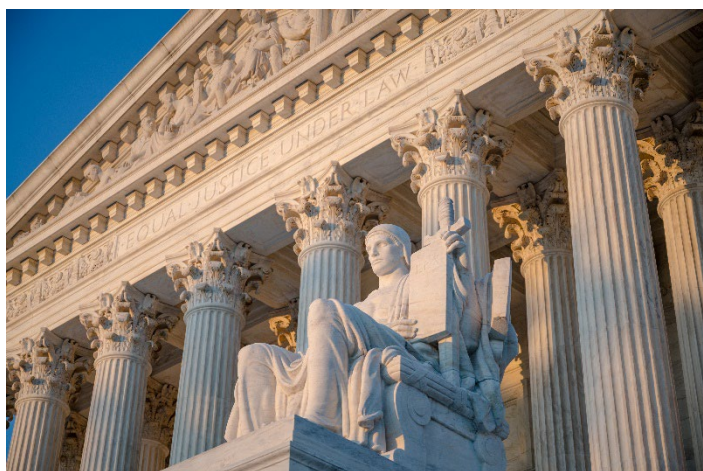
Additional Information

These relief measures aim to balance the needs of sponsors and participants, ensuring continued access to retirement benefits while addressing compliance challenges posed by Hurricanes Helene and Milton. While this article highlights key aspects of the guidance it does not encompass all details or provisions. For additional information about the plans and participants that qualify, the relief periods, relief measures and their application, can be found in EBSA Disaster Relief Notice 2024-01.

Sources

<https://www.federalregister.gov/documents/2024/11/08/2024-26014/extension-of-certain-timeframes-for-employee-benefit-plans-participants-beneficiaries-qualified>

Supreme Court Declines Arbitration Case: What Plan Sponsors Need to Know



The Supreme Court has again declined to address whether ERISA disputes can be resolved through arbitration, leaving plan sponsors with more questions than answers. The court's decision in *Argent Trust Co. v. Ramon Cedeno et al.* highlights the ongoing circuit split regarding arbitration provisions in ERISA-covered plans. While some courts uphold these provisions, others invalidate them, forcing sponsors to grapple with conflicting legal interpretations. Here's how this unresolved issue impacts plan sponsors — and what they can do to mitigate risks.

Uncertainty in Plan Design

The absence of a definitive ruling poses significant challenges for plan sponsors designing and managing retirement plans. Arbitration clauses, which are intended to streamline dispute resolution, may be ruled unenforceable in some jurisdictions, leaving sponsors exposed to legal challenges. For employers operating across multiple states, the inconsistent enforcement among circuits adds another layer of complexity, making it harder to maintain cross-plan uniformity and ensure legal compliance.

Increased Litigation Exposure

With arbitration provisions on uncertain legal footing, plan sponsors are left vulnerable to federal court lawsuits. Compared to arbitration, federal court cases are typically costlier, more time-consuming and more likely to allow class-action claims. The inability to block class actions through arbitration provisions heightens both financial and reputational risks for sponsors.

Administrative Burdens and Rising Costs

Staying compliant in this environment demands significant time and resources. Sponsors must regularly update plan documents to reflect the latest judicial interpretations and may need to consult legal counsel more frequently to help mitigate risks. This ongoing burden can divert attention from other strategic priorities and increase overall administrative costs.

The Legislative Wildcard

Proposals like the Employee and Retiree Access to Justice Act aim to ban mandatory arbitration clauses in ERISA-covered plans altogether. If passed, the legislation would provide clarity by eliminating arbitration as an option but could also lead to an increase in litigation. Sponsors would need to adjust their dispute resolution strategies and prepare for potentially higher legal expenses.

How Plan Sponsors Can Navigate the Uncertainty

In the absence of clear guidance from the Supreme Court, plan sponsors should focus on proactive risk management:

- Evaluate existing arbitration clauses. Work closely with legal counsel to assess the enforceability of existing arbitration provisions under current case law.
- Explore alternative conflict resolution channels and strengthen dispute management strategies. Evaluate options that align with current legal and regulatory standards, such as resolution initiatives offered by the IRS and DOL. Additionally, regular self-audits can further help identify and reduce potential conflicts with participants, beneficiaries and regulatory bodies to help mitigate fiduciary risk.
- Enhance participant communication. Clearly explain plan provisions to participants to help build trust and reduce confusion during this period of uncertainty.

The Supreme Court's decision to sidestep the arbitration issue leaves plan sponsors in a state of legal limbo. But with careful planning and a focus on compliance, sponsors can help navigate this ongoing uncertainty and mitigate potential risks.

Sources

<https://www.plansponsor.com/supreme-court-declines-to-review-petition-on-erisa-arbitration/>

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