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Employers to be more accountable for 401(k) plans

By Andrea Rumbaugh | May 21, 2015 | Updated: May 22, 2015 10:07pm

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A recent Supreme Court ruling is expected to have a major impact on 401(k) plans.

A recent Supreme Court ruling will expand the rights of employees to sue over their 401(k) plans and increase pressure on employers to be vigilant in monitoring their retirement plans' offerings, experts said.

This week's ruling in Tibble v. Edison International emphasized that overseeing a retirement plan includes a continuing duty to monitor investments and remove options that aren't prudent and in the plan's best interest. The high court extended the period in which employees may sue to six years from the time an employer stopped monitoring the investments in question. Previously, courts had ruled the six-year deadline began when the disputed investments were added to the plan.

"This is a huge wake-up call," said Brent Thomas, president of Houston-based Prudentia Fiduciary Partners. "This is a game changer."

Thomas said the ruling makes it more important than ever for employers to actively monitor their plans and document this monitoring.

In the lawsuit, filed in 2007, beneficiaries argued that mutual funds added to their plan in 1999 and 2002 had higher fees than other mutual funds available.

The lower courts said the complaint filed in regard to the 1999 fund selections was past the six-year time frame that federal law permits to file lawsuits. The Supreme Court ruling means that complaint will be sent back to a lower court for further review as to whether any fiduciary duties were breached resulting in losses to the 401(k) plan.

The Supreme Court focused its opinion on the six-year time frame, but the heart of the lawsuit is the amount of fees charged by the mutual fund management companies.

Some 401(k) advisers may recommend investments charging higher fees that benefit the advisers.

Higher fees also can cost retirement savers tens of thousands of dollars over their career, said Michael Abbott, Houston-based employee benefits and executive compensation partner at the Gardere Wynne Sewell law firm.

Fees have come under increased scrutiny as employers ditch pensions for 401(k) plans. In 2011, only 18 percent of private

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industry employees had pensions, down from 35 percent in the early 1990s, the U.S. Bureau of Labor Statistics reports.

Fees don't affect the amount of retirement money promised in a pension, Abbott said. But they directly impact 401(k) accounts. He encourages employees to be proactive with their savings.

"As a participant, you need to take responsibility for your own retirement investments and make sure that your 401(k) fiduciaries are periodically monitoring the investments that are being offered," he said.

Associated closely with monitoring 401(k) fees is the regulatory push to provide better investment advice. The U.S. Department of Labor announced last month it is proposing a rule that would hold more retirement financial advisers to the industry's highest standard, requiring advisers and brokers to act in their clients' best interest.

Thomas, with Prudentia, which helps protect employers from being sued or otherwise penalized for mismanagement of their retirement plans, is disappointed the proposed rule still permits higher-cost investments and conflicts of interest as long as they're disclosed.

"The plan sponsors need to be on top of this," he said. "They can't assume the investment advisers are looking after their best interests."

Scott Bishop, director of financial planning for Houston-based STA Wealth Management, said the Supreme Court and Labor Department are increasing competition and transparency among retirement plans and holding those involved with creating and maintaining retirement plans to a higher standard.

"I think it's a good discussion that will hopefully lead to a better resolution than what we have today," he said.