

PUBLICATION

Amicus Briefs: The Department of Labor's New ERISA Playbook



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In the past few months, the U.S. Department of Labor (DOL) has increasingly attempted to use court filings to shape how retirement plan rules are applied. These filings, called amicus briefs (“friend of the court” briefs), allow the DOL to weigh in on cases even if it is not a party. In effect, the DOL is signaling to courts (and the public) how it interprets the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and how plan fiduciaries should act, potentially shaping litigation outcomes and clarifying expectations without formal rulemaking.

This approach appears consistent with the DOL’s broader agenda aimed at reducing compliance burdens and providing plan fiduciaries with more flexibility in terms of fulfilling the obligations. As DOL Secretary Chavez-DeRemer announced in a July 1, 2025, press release, the DOL is focused on “eliminating unnecessary regulations that stifle growth and limit opportunity.” At the same time, the DOL desires to expand flexibility for workers and businesses. While the DOL’s litigation positions are case-specific, they appear to signal how the agency intends to apply ERISA in practice, thus providing plan fiduciaries with a “playbook” for which decisions and processes are more likely to be viewed as prudent.

What the DOL Is Doing

The DOL has filed amicus briefs in a wide range of high-profile ERISA cases on topics such as 401(k) plan investment performance, investment fees, use of forfeitures and pension risk transfers. In January 2026, the DOL also issued press releases on some of these cases, explaining the purpose of the filings and emphasizing its primary authority in interpreting and enforcing provisions of Title I of ERISA:

- **Pension Risk Transfers:** Pension risk transfers are transactions where a defined benefit plan sponsor transfers its pension obligations to an insurance provider. Some lawsuits have claimed that fiduciaries breached their duties by engaging in these transactions. In its amicus brief to the Fourth Circuit Court of Appeals in *Konya, et al v. Lockheed Martin Corp.*, No. 25-2061 (4th Cir.), the DOL emphasized that the decision to derisk is a business choice, not automatically a fiduciary breach and that “ERISA does not allow hindsight second-guessing or Monday-morning quarterbacking of discretionary fiduciary decisions.” In a January 9, 2026, press release regarding its brief in *Konya*, the DOL further clarified its position by stating that “the decision to enter a pension risk transfer is a settlor function reserved for the plan sponsor.”
- **Forfeiture Use:** When defined contribution plan participants terminate active participation before they have completely vested in employer contributions, plan fiduciaries may choose to use the participants’ forfeiture amounts to reduce future employer contributions and/or pay reasonable plan administrative expenses. The

DOL has filed amicus briefs in favor of employers, supporting dismissal of claims in the forfeiture cases *Hutchins v. HP Inc. et al*, No. 25-826 (9th Cir.), *Wright v. JPMorgan Chase & Co. et al*, No. 25-4235 (9th Cir.), *Cain v. Siemens*, 25-2564 (3rd Cir.), and *Barragan v. Honeywell Int'l Inc.*, No. 25-2609 (3rd Cir.). Specifically, in *Barragan* currently pending before the Third Circuit Court of Appeals, plan participants challenged plan fiduciaries' decisions regarding the use of forfeitures, alleging that allocating forfeited amounts to reduce employer contributions, as opposed to defraying administrative expenses, violates the fiduciary duties of loyalty and prudence. The DOL emphasized in its amicus brief that fiduciaries have flexibility under the plan at issue and noted in its press release on this case that "[t]here is no *per se* rule barring plan fiduciaries from deciding to allocate forfeited employer contributions to reduce future employer contributions rather than using those funds to offset administrative costs," and "ERISA's core principle is to protect the benefits promised to plan participants."

- **Investment Performance and Excessive Fees:** Many ERISA lawsuits challenge alleged excessive fees or underperforming investments in 401(k) plan or other defined contribution plans. The DOL has filed amicus briefs in Supreme Court cases involving plan investment, including *Parker-Hannifin Corp. v. Johnson*, No. 24-1030 (6th Cir.), and *Pizarro v. The Home Depot, Inc.*, No. 24-620 (11th Cir.). Specifically, in *Pizarro* plaintiffs alleged that the plan investment options had excessive fees and were imprudent investment options, and plaintiffs attempted to shift the burden of proof onto fiduciaries to prove they acted prudently. The DOL clarified in its amicus brief that plaintiffs must prove any losses themselves, stating in a press release that "ERISA does not impose a special burden-shifting framework requiring defendants to disprove loss causation. Consistent with Supreme Court precedent, plaintiffs bear the burden of proving the essential elements of their claims, including loss causation."

Notably, following the change in presidential administration last year, the DOL reversed its position on the burden-shifting issue in *Pizarro*. Specifically, the DOL filed two amicus briefs in this case: first to the Eleventh Circuit in February 2023 and later to the Supreme Court in December 2025. While the DOL had argued in its February 2023 Eleventh Circuit amicus brief that ERISA fiduciaries bear the burden of disproving causation, it has more recently stated in its December 2025 Supreme Court amicus brief that "the relevant authorities are better understood as leaving the burden of proving causation on ERISA plaintiffs." The plaintiffs shortly thereafter withdrew their Supreme Court petition, which the DOL welcomed in its January 9, 2026, press release. In that press release, the DOL warned that expansive readings of ERISA could "fuel meritless litigation and impose unnecessary costs on plan sponsors—outcomes fundamentally at odds with ERISA's goals of efficiency, predictability and encouragement of employer-sponsored retirement plans." The DOL said that the outcome "should provide reassurance...that the Department of Labor is committed to ending regulation by litigation and to defending ERISA as Congress intended."

Why the DOL's Amicus Briefs Matter for Plan Fiduciaries

These amicus briefs provide insights into how the DOL views key ERISA issues and how courts may treat certain claims. For example, the amicus brief in *Konya* marks the DOL's first public position on pension risk transfer since a wave of class action lawsuits began in 2024. Amicus briefs do not create new law, but they can influence how courts interpret existing law, especially on technical ERISA questions where judges often look to agency guidance. *Pizarro* shows this in action. In this case, plaintiffs sought Supreme Court review of the Eleventh Circuit's decision they claimed was favorable to the fiduciaries. After the DOL filed its amicus brief clarifying its view that plaintiffs bear the burden of proving losses and that ERISA does not require defendants to disprove causation, the plaintiffs withdrew their petition for Supreme Court review, effectively bringing the case to an end.

Practical Steps for Plan Fiduciaries

As Daniel Aronowitz, Assistant Secretary of Labor for the Employee Benefits Security Administration, noted in a January 9, 2026, press release on the DOL's amicus brief in *Konya*, "[the DOL's] amicus brief reinforces ERISA as law of process in which plan fiduciaries have discretion and flexibility to make informed judgment calls." While amicus briefs are not binding law, the DOL's positions in these filings provide useful guidance for plan fiduciaries in establishing benchmarks for proper governance and documentation practices, thus assisting fiduciaries in making decisions in a manner the DOL is more likely to view as prudent and consistent with ERISA and related DOL guidance.

To put the perspectives gleaned from the recent DOL amicus briefs into practice, fiduciaries should consider the following points:

- **Use DOL Briefs as a Roadmap.** Treat DOL amicus briefs as a practical guide to understanding how the DOL interprets ERISA and what the DOL is likely to expect from fiduciaries.
- **Document Your Decisions.** Keep clear records of meetings, investment reviews, and service-provider choices. Note why each decision was made, what options were considered, and how the choice supports the plan's objectives.
- **Follow Plan Rules.** Make sure discretionary actions, like allocating forfeitures, follow the plan documents.
- **Monitor Investments and Fees.** Track investment performance and service-provider fees, comparing results to meaningful benchmarks when available on an ongoing basis. Even if some investments underperform or fees are questioned, documenting careful review and monitoring shows prudence.
- **Review Governance Regularly.** Periodically assess committee charters, investment policies, and decision-making processes to confirm they follow DOL guidance and reflect thoughtful, prudent decision-making.

If you have questions regarding the impact of the DOL's recent use of amicus briefs to define ERISA fiduciary duties and obligations, please contact us.