

A Surprise Twist in ERISA Class Action Trends In 2024

An inside look at the evolving world of ERISA class actions against the companies that sponsor employee benefit plans.¹

Information on trending ERISA class actions against employee benefit plan fiduciaries is difficult to obtain due to the lack of a central reporting agency. As a leading fiduciary liability insurer, Chubb not only diligently monitors these trends but also has hard-earned, first-hand insights into many of these suits. In this report, Chubb gives readers unique access to these insights. Read on to learn more.

New Types of ERISA Class Actions in 2024

New in 2024, plaintiffs are aggressively targeting all of a company's core employee benefit plans in ERISA class actions – even suing over group health plans. These class actions second guess fiduciary decisions and put forth novel theories of liability. Nearly all plans are at risk.

These are some of the ERISA class action trends Chubb is tracking.²

Suits Involving 401(k) and 403(b) Plans

- Traditional Fee & Expense Suits:** These are the original suits that attack recordkeeping fees and investments and performance issues.
- Forfeiture Suits:** These focus on how parties use the company's matching contributions that ex-employees forfeit when they leave their job before they vest.

Suits Involving Group Health Plans

- Surcharge Suits:** These contend tobacco surcharges should not be assessed to participants who were tobacco users who participated in tobacco cessation programs.
- Prescription Drug Fees and Expense Suits:** These allege that the fees and expenses paid for prescription drugs and for the services of pharmacy benefit managers are too high.

Suits Involving Defined Benefit Pension Plans

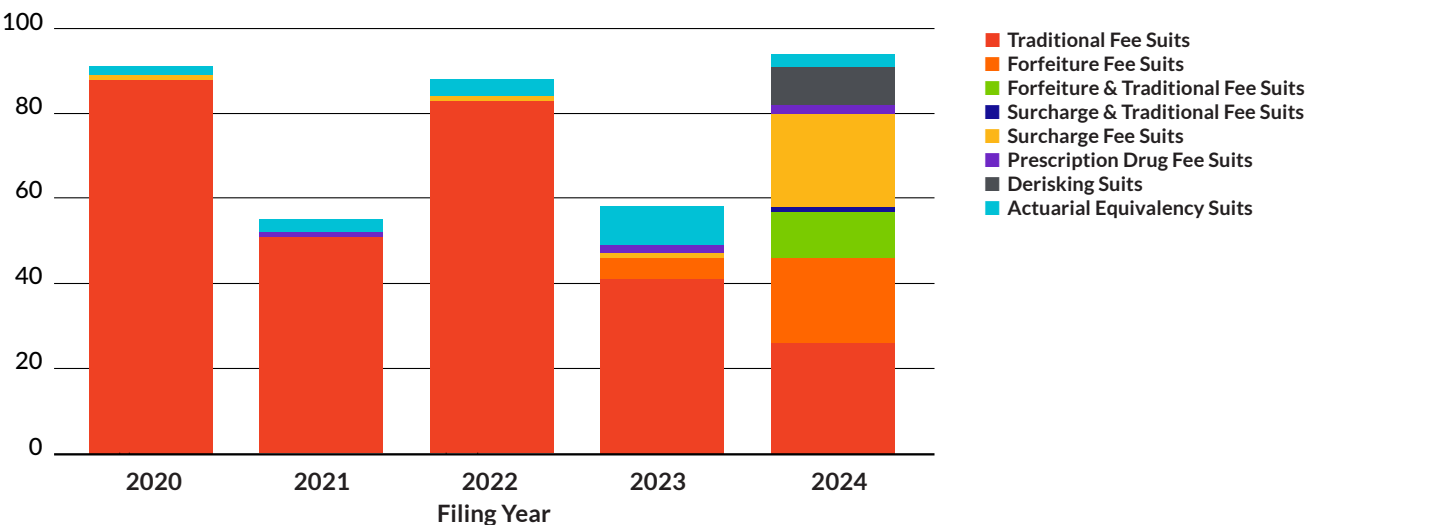
- Actuarial Equivalency Suits:** These attack the use of allegedly outdated mortality data in calculating optional pension benefits such as joint and single life annuities.
- Derisking/Annuitization Suits:** These attack the transfer of pension obligations to a third-party insurer via the purchase of annuities, including the selection of the annuity provider.

We're also keeping an eye on emerging ESG (environmental, social & governance) issues.

Elevated Number of ERISA Class Action Filings in 2024

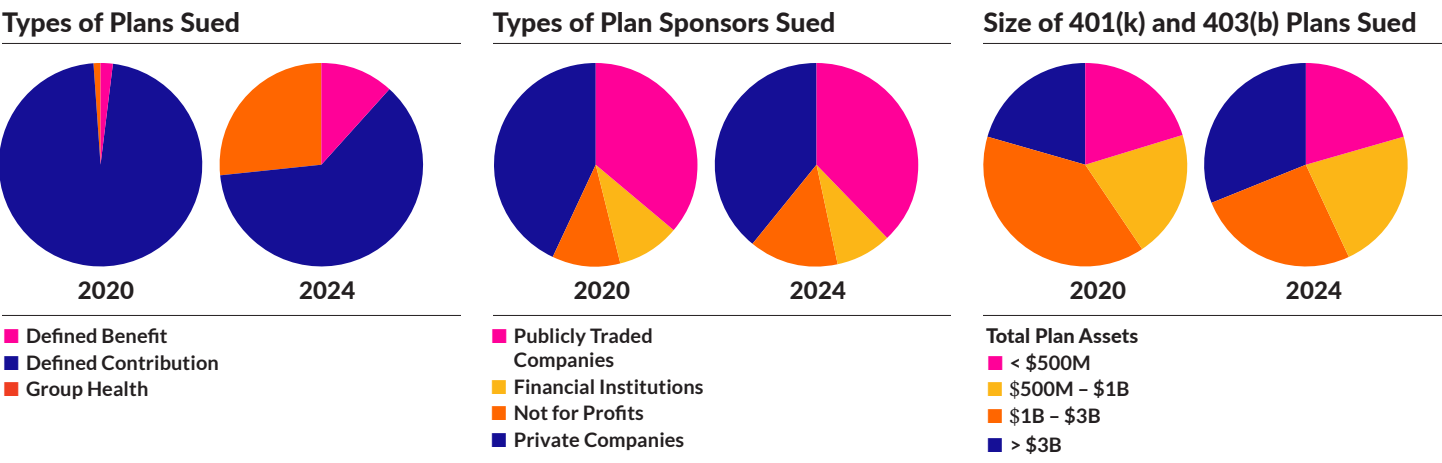
ERISA class action filings are at a fever pitch. Moreover, some of these suits are “2 class actions in 1” – pursuing multiple theories (e.g. retirement plan fees and health plan surcharges) in a single suit, which forces companies to defend on two fronts.

Pace of Trending ERISA Class Action Filings



A Kaleidoscope of Targets

All types of plans, plan sponsors, and plan sizes are being targeted in these trending ERISA class actions.



Meritless Suits Abound

Make no mistake, well-managed plans are routinely targeted by plaintiffs.

Plaintiffs often make inaccurate and misleading allegations, which courts must accept as true when deciding a motion to dismiss.

Defendants usually win once courts get to weigh the merits of a case. Of the fee cases filed since 2020 that have gone to a trial verdict, defendants won all but one.

Fiduciaries Caught In a No-Win Situation

Once an ERISA class action survives motion to dismiss, defense budgets skyrocket, requiring defendants to pay millions to defend spurious cases.

Example of a Typical ERISA Class Action Defense Budget³

\$4M – \$8M

Attorneys' fees through Motion for Summary Judgment

\$2M – \$4M

Attorneys' fees for trial (complex cases can cost much more)

\$2M

Experts' fees (on top of attorneys' fees)

Over half of the cases filed since 2020 are still pending, posing billions of dollars in potential future defense costs.

The Plaintiffs' Lawyers are the Real Winners

Plaintiffs leverage big defense budgets to extract settlements.

- The average settlement for Class Actions filed since 2020 is **over \$4M**,⁴ exclusive of defense costs.
- Plaintiffs' attorneys usually take at least **one-third of the total settlement as their fee**⁵, often leaving little for each plan participant.

What Can You Do?

To manage ERISA class action exposure, consider this:

- ➔ Follow a prudent process, including using qualified fiduciary experts. Chubb Insureds have access to discounted loss prevention services to help them do this.
- ➔ Obtain adequate Fiduciary Liability Insurance from a trusted, and experienced carrier like Chubb, the industry leader with over 150 years in the industry.
- ➔ Become more familiar with claims trends, fiduciary insurance and best practices by visiting Chubb's Fiduciary Insurance Solutions.

Visit Chubb's [Fiduciary Insurance Solutions](#) to learn more or to get a quote:



Access Chubb's [Loss Prevention Services](#)



¹The data contained in this report reflects ERISA class actions brought against plan sponsors and their internal fiduciaries (i.e. the parties that are typically protected by Fiduciary Liability Insurance). It does not include ERISA class actions filed solely against plan service providers, such as recordkeepers, investment managers, and pharmacy benefit managers. This data is based on Chubb's best efforts to monitor these matters industry-wide, but Chubb makes no representations or warranties as to the completeness of the data.
²Note that plaintiffs filed other types of ERISA class action filings (e.g. suits involving ESOPs, mental health coverage, etc.) in addition to those described herein, but those types of suits are beyond the scope of this report.
³Based on Chubb's experience.
⁴Based on Chubb's information and on publicly available information.
⁵This figure is based on publicly available information known at the time of this writing as to settlement amount and number of plan participants, as well as on the supposition that plaintiffs' lawyers are collecting 1/3 of any settlement in fee.