

Top Universities Slapped with Retirement Plan Lawsuits

Class actions accuse universities of charging excessive fees for retirement plans



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Several prestigious universities recently were hit with class actions alleging that their retirement plan participants were forced to pay millions of dollars in unreasonable and excessive fees in violation of the Employee Retirement Income Security Act (ERISA).

On Aug. 9, Missouri-based law firm Schlichter, Bogard & Denton filed separate lawsuits against the Massachusetts Institute of Technology, New York University (NYU) and Yale University on behalf of more than 60,000 employees.

Later in August, the firm lodged additional complaints against Duke University, Johns Hopkins University, the University of Pennsylvania and Vanderbilt University.

The lawsuits all similarly alleged that the universities charged participants in defined contribution plans—such as 401(k) and 403(b) plans—unreasonable fees for record-keeping, administrative and investment services.

Many of the retirement plans at issue are 403(b) plans, which are available to certain public school employees, ministers and employees of tax-exempt organizations.

"Employees of nonprofit institutions have the same right to build meaningful retirement assets as do employees of for-profit companies," said Jerry Schlichter, an attorney for the plaintiffs.

"Many of these plans have been on autopilot for a long time," said Carol Buckmann, an attorney with Cohen & Buckmann in New York City. "These suits should be a wake-up call for the fiduciaries to make sure that they are following best practices regarding investments, fees and services."

Fiduciary Breach Alleged

Under ERISA, fiduciaries who manage and administer retirement plans must act in the best interest of the participants and beneficiaries. Fiduciaries are required to make prudent investments and ensure that expenses are reasonable.

"Anyone who is a plan fiduciary should always follow the beacon that he or she must act at all times for the exclusive benefit of the employees and retirees," Schlichter said. "That will drive decision-making in a way that complies with their fiduciary duty."

The class-action lawsuits, however, asserted that the schools breached their fiduciary duties by selecting high-cost and poor-performing investments.

Additionally, the plaintiffs argued that the schools provided too many duplicative investment options in each of the plans, which could lead to "decision paralysis" for participants.

The complaint against Duke, for example, said that more than 400 investment options were available for certain asset classes in its retirement plan, whereas comparable defined contribution plans had an average of 15 investment options.

"By consolidating duplicative investments of the same investment style into a single investment option, the plan would then have the ability to command lower-cost investments," the complaint said.

Multiple Record Keepers

Several of the lawsuits also claimed that the use of multiple record keepers unreasonably forced plan participants to pay significantly higher fees than they would have for a single record keeper.

The NYU faculty-plan participants collectively paid between \$3.1 million and \$3.8 million per year for record-keeping services, the plaintiffs claimed, based on data from the plan's Form 5500 that was filed with the Department of Labor.

These fees are more than 670 percent higher than reasonable fees and resulted in "millions of dollars in excessive record-keeping fees each year," the complaint alleged.

Schools Defend Plans

The universities aren't taking these accusations lightly and are prepared to defend their retirement plans.

Karen Peart, a spokeswoman for Yale, said the university is cautious and careful in administering its plans and will defend itself vigorously.

Michael Schoenfeld, Duke University's vice president for public affairs and government relations, said, "Duke provides a range of options that give employees flexibility in designing retirement plans to meet their individual needs.

"These investments are reviewed and carefully managed in accord with federal law to provide low costs and good outcomes for our employees," he said. "We will continue to commit to these guiding principles."

NYU spokesman Matt Nagel said that the university received the papers only last week and he could not comment at length. However, he said, NYU disputes the lawsuit's claims.

"NYU takes seriously the welfare of our faculty and employees ... and the retirement plans offered to them are chosen and administered carefully and prudently," Nagel said.

"Beyond that, we would note that, first, NYU's plans have comparatively low fees; second, decisions about our retirement plan choices are influenced by feedback from our faculty and other employees; and, third, that the named plaintiffs in this case notably include several faculty members who recently lost unrelated court cases they brought against NYU."

The cases are *Cassell v. Vanderbilt Univ.*, M.D. Tenn., No. 3:16-cv-02086; *Clark v. Duke Univ.*, M.D.N.C., No. 1:16-cv-01044; *Kelly v. The Johns Hopkins Univ.*, D. Md., No. 1:16-cv-02835; *Sacerdote v. N.Y. Univ.*, S.D.N.Y., No. 1:16-cv-06284; *Sweda v. Univ. of Penn.*, E.D. Pa., No. 2:16-cv-04329; *Tracey v. Mass. Inst. of*

Tech., D. Mass., No. 1:16-cv-11620; and *Vellali v. Yale Univ.*, D. Conn., No. 3:16-cv-01345.