
Fund management

US employers face mounting lawsuits over retirement fund fees

Workers are on pace to file a near-record number of class-action claims this year over excessive charges



High 401(k) retirement plan fees have led to growing lawsuits from workers against employers © AP

Sun Yu in New York

Published NOV 10 2025

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US workers are on pace to file a near-record number of class-action lawsuits over excessive fees in retirement plans this year, as lucrative settlements attract more plaintiff law firms to the issue.

Encore Fiduciary, an insurance underwriter for fiduciary litigation involving 401(k) plans, projects 99 suits will be filed this year against employers over allegations of overcharging in their defined contribution pension plans this year, just shy of the record 102 in 2020. There have been 74 filed through September, the company said.

In these cases, employees accuse their companies of failing to shield them from investment options with unusually high fees, and settlements often require employers to pay millions of dollars, with most of the money returned to workers' retirement accounts after lawyers take their fees for handling the case.

The boom in 401(k) litigation has been driven by favourable court rulings, an expanding network of plaintiff lawyers and growing awareness among workers about investment fees.

Big employers such as IBM and Southwest Airlines have faced lawsuits this year over underperforming investment options in their 401(k) plans — IBM for offering target-date [funds](#) that did poorly, and Southwest for sticking with an underperforming stock fund that invests in large companies.

IBM declined to comment. Southwest did not respond to a request for comment.

Lawyers said the wave of lawsuits has helped bring down fees and strengthened protections for plan participants — though many employers argue the litigation has gone too far, accusing attorneys of exploiting the system for profit.

“We try to keep everybody on the straight and narrow,” said Charles Field, co-vice chair of Sanford Heisler Sharp McKnight, a law firm that has filed 401(k) excessive fee cases.

Lawyers began filing excessive-fee cases nearly two decades ago, but it took years of litigation before courts began to rule in their favour.

“This is not something one does lightly,” said Jerry Schlichter, co-managing partner of Schlichter Bogard & Denton, which filed the first 401(k) excessive-fee lawsuit against ABB Inc. in 2006. The firm spent 13 years litigating the case, which resulted in a \$55mn settlement for employees over alleged losses of “millions of dollars”.

Field said the [US Supreme Court](#) had been “somewhat friendly” to 401(k) participants, noting that it has in recent years issued three rulings — the latest in May — stressing that plan sponsors have an ongoing duty to monitor investment options and remove imprudent investment options, while also bearing the burden of proving their fees are reasonable.

“It has just made it easier to bring a case,” said Steven Day, a partner at Jackson Walker who has represented employers in 401(k) lawsuits.

Meanwhile, the lucrative settlements from 401(k) overcharge cases — from which lawyers can take up to a third — have enticed a growing number of law firms to take plan sponsors to court.

Justin Bove, chief revenue officer at Encore Fiduciary, said many lawyers have found a “viable business model” in pursuing excessive-fee claims that can yield settlements worth tens of millions of dollars.

“The plaintiff firms are really out here to profit off these settlements,” said Bove.

Encore recorded 53 401(k) excessive fee settlements worth \$204mn last year, up from 12 worth \$139mn in 2020.

Lawyers reject the notion that they go after plan sponsors purely for profit. “We are not there to shake down companies,” said Field, who won a record \$69mn settlement in June for 350,000 UnitedHealth Group employees. “We are there to bring cases that will bring about change.”

An expert hired by plaintiffs in the UnitedHealth case calculated damages in a range of \$276mn to \$340mn. Sanford Heisler Sharp McKnight received one-third of the settlement, or \$23mn, plus more than \$735,000 in costs, according to court documents.

A UnitedHealth Group spokesperson said: “Our plan fiduciaries have always acted in the best interests of plan participants and we deny any allegations to the contrary; nevertheless, this settlement allowed all parties to put this matter behind them and move on.”

Lawyers say lawsuits have played a key role in making 401(k) plans cheaper to manage. A McKinsey study found that record-keeping and administrative fees dropped 25 to 35 per cent between 2013 and 2023, in part due to “increased litigation”.

Workers are also becoming more willing to challenge their employers over overpriced retirement plans as they become more aware of the issue.

Schlichter said he had received more enquiries about 401(k) overcharge cases as workers “learned more about the duty of the employer”.

“There is more recognition on the part of employees,” Schlichter added. When they hear about fee litigation, they realise “there may be a problem with their plans”.

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