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The U.S. Supreme Court Has Spoken on 401(k) Liability – Are You Covered?

Now more than ever, fiduciary-related exposures and fiduciary liability coverage should be top of mind for companies administering 401(k) plans. This month, the U.S. Supreme Court issued the *Tibble v. Edison International, et al.* decision that highlights the serious exposures 401(k) plan administrators face.

In *Tibble*, the beneficiaries under Edison International's 401(k) Savings Plan argued that Edison breached its fiduciary duty by offering higher priced retail-class mutual funds as investments when identical, cheaper institutional-class funds were available. The lower courts had held that ERISA's six-year statute of limitations barred some of the claims, as the disputed funds were acquired in 1999. The Supreme Court, however, rejected the argument that limitations necessarily began to run when Edison acquired the fund. Rather, the Court recognized that "a fiduciary has a *continuing duty of some kind to monitor investments and remove imprudent ones*." The Court then held that a breach of this continuing duty could trigger ERISA's limitation period, irrespective of when the fund itself was acquired.

This decision punctuates the importance of fiduciary liability insurance. The average costs of defending or settling an ERISA claim can be financially catastrophic, yet *most insurance policies exclude these claims*. Fiduciary liability insurance helps fill the coverage gaps by specifically protecting companies against fiduciary claims involving administrative error, inadequate funding, and imprudent investment decisions, among others. In light of the *Tibble* opinion, now is the time for companies to consider their fiduciary exposures and coverage needs.

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