

30 Minutes Now or 300 Hours Later? 3 Quick Steps to Mitigate the Ongoing Risk of Forfeiture Litigation



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Class action lawsuits alleging various claims relating to mismanagement of 401(k) plan forfeitures continue to be filed, settled, dismissed and appealed. We've written about this before ([The Forfeiture Cases Keep Rolling In: This Time with A Solid Win for Defendants](#)). In the words of a wise litigator: "once you're sued, you've already lost" (i.e., even if you "win" the lawsuit, you now need to devote many hours and dollars just to handle it). So, 30 minutes now could save hundreds of hours and

possibly millions of dollars later.

In 2025 alone, 48 "forfeiture" lawsuits were filed.¹ Although many were dismissed, appeals are now pending in the 9th, 8th, 6th, 4th and 3rd circuits, with uncertain outcomes.² And settlements continue to be reported.

A proposed \$42.7 million settlement involving *Providence Health & Services* in early 2026 stands out as one of the largest forfeiture-related settlements to date. The allegations in that case focused heavily on plan language that purportedly required a specific ordering of forfeiture use, with plaintiffs claiming that fiduciaries failed to follow those very specific plan terms.

Other settlements reflect similar dynamics. *Capital One* reached a \$9.6 million settlement in January 2026 resolving forfeiture-related claims alongside broader fiduciary breach allegations.³ *NextEra Energy* followed with an approximately \$8 million settlement in

¹ See: <https://encorefiduciary.com/erisa-fiduciary-litigation-in-2025-plaintiff-law-firms-continuefrenetic-pace/>.

² See <https://news.bloomberglaw.com/employee-benefits/rising-tide-of-401k-forfeiture-suits-reaches-appellate-level>

³ See <https://news.bloomberglaw.com/employee-benefits/capital-one-gets-first-approval-for-9-6-million-401k-accord>

February 2026, where forfeiture claims were paired with excessive fee allegations and the settlement affected more than 21,000 participants.⁴

These cases underscore a consistent theme. Settlements are frequently driven by litigation economics, including the cost of discovery, the involvement of expert analysis, and the uncertainty associated with class action proceedings. Claims are often bundled with more established ERISA theories, which increases overall exposure and creates additional pressure to resolve cases before reaching the merits.

So, what does one do with that quick 30 minutes to avoid a similar fate?

1. Find your plan document. Find the “forfeiture” language in your plan document. It will likely either have a specific order for the use of forfeitures or will give the plan administrator discretion to make that decision.
2. Determine if plan operations currently follow the plan’s provisions. Hint – don’t go it alone here, contact your plan service provider (record keeper, third party administrator, counsel) for help with this. If your plan provision provides discretion, consider if that is still the direction you want to take or if that provision should be clarified in a written policy. Nearly all qualified plans will need to be amended for Secure 2.0 by 12/31/2026. See: [[Now is the Time to Start Planning for Upcoming 2026 Plan Amendment Deadlines](#)]. Plan document providers will start rolling out those amendments later this year, which provides a perfect opportunity to also address any amendments needed for handling forfeitures.
3. Check with your insurance broker on the status and adequacy of your fiduciary insurance.

Bonus step that takes no extra time: Sleep better tonight.

If you have any questions about your forfeiture practices or assistance reviewing your plan’s forfeiture provisions or administration, please contact your Boutwell Fay attorney.

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⁴ See <https://news.bloomberglaw.com/employee-benefits/nextera-energy-will-pay-8-million-to-end-401k-plan-lawsuit>