

Erin Weber Discusses Two Employee Benefits Cases to Watch in 2024 with Law360

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Winston & Strawn partner Erin Weber spoke with Law360 about two employee benefits cases that attorneys should watch in 2024. In *Vellali v. Yale University*, Yale employees are appealing a jury ruling that found the school breached its ERISA fiduciary duty by allowing excessively high 401(k) recordkeeping and administrative fees, but concluded the violations didn't result in damages to the class. The employees are arguing that the jury didn't get adequate guidance on how to assess loss and damages. Erin stated that she is closely watching the Yale appeal because it's been rare for these types of ERISA excessive fee suits to reach the jury trial stage.

"We just don't see these ERISA cases going the full distance and going in front of the jury," Erin said, adding that the Yale case illustrates how "it's hard for a jury to deal with all of these issues."

In *Platt v. Sodexo SA*, Sodexo has asked the Ninth Circuit to force arbitration of a proposed class action challenging a health plan surcharge. Platt sued Sodexo in December 2022, arguing the policy of charging nicotine users higher health plan premiums was discriminatory. Although the health plan terms require arbitration, the district court held that Mr. Platt had not specifically agreed to the plan terms, and that a plan sponsor cannot unilaterally amend a plan to include arbitration provisions.

"One of the reasons this case is important is because, based on what the district court said, you would have to get participants' consent for every change that you make in a plan," Erin said. "And it's not feasible, and plans have never been administered that way." She added that if Ninth Circuit were to affirm the district court, the decision could "wreak havoc on plan administration — it would make amending plans practically impossible," she said.

"I think it will be important for the Ninth Circuit to say that this is not the standard," said Erin.

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