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SUPREME COURT'S DECISIONS LIMITING THE POWER OF THE ADMINISTRATIVE STATE

This gives parties the opportunity to have their case heard in court without being forced to go through potentially lengthy administrative procedures first.

On April 14, 2023, the US Supreme Court issued a unanimous ruling making it easier for people and companies to challenge the authority and structure of administrative agencies. In the case of *Axon v. FTC* (which is consolidated with *Cochran v. SEC*), the Court stated that individuals and organizations with constitutional objections to agency power do not have to wait until administrative proceedings are concluded before raising their arguments in court. This means that if there is belief that a government agency is overstepping its powers and violating an individual or group's constitutional rights, there is no longer a need to wait until the agency finishes its internal processes before a party can challenge it in court. Meaning, they can immediately bring their concerns to a judge and argue that the agency's actions are unconstitutional. This gives parties the opportunity to have their case heard in court without being forced to go through potentially lengthy administrative procedures first. It allows for a timelier resolution and protects their constitutional rights. This unanimous ruling has been another blow to the administrative state's power.

Justice Elena Kagan, speaking on behalf of the eight other justices in the unanimous decision, emphasized that the substance of the specific arguments in each case was not before the court. She explained that the Plaintiffs' challenges were fundamental, alleging that the agencies, as currently structured, are unconstitutional in much of their work. Justice Kagan added that the Court's role was not to resolve the challenges, but to decide where they could be heard.

The administrative state refers to the government's network of administrative agencies, which are authorized by Congress to implement and enforce laws and regulations. These agencies are responsible for carrying out a wide range of functions, including protecting public health and safety, regulating financial markets, and enforcing civil rights. Administrative agencies have been an integral part of the US government since the early 20th century and have grown significantly in size and influence over time. They operate independently of the three

branches of government (legislative, executive, and judicial), but they are subject to oversight by Congress and the courts.

The role of administrative agencies in interpreting and enforcing laws has been a topic of ongoing debate in the United States, with some critics arguing that the administrative state has become too powerful and unaccountable, while others argue that it is necessary for effective governance in a complex society. This power to interpret and enforce the law is known as the *Chevron Deference*. The Chevron Deference or Chevron doctrine is a legal principle established by a 1984 Supreme Court case, *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The doctrine is based on the idea that agencies have specialized expertise and knowledge in their respective fields and that Congress intended to give them discretion to interpret and implement statutes in a way that reflects their expertise. Under the Chevron doctrine, if an agency's interpretation of a statute is reasonable, a court will generally defer to that interpretation, even if the court might have interpreted the statute differently.

The recent unanimous ruling resolved the two cases with the Federal Trade Commission and the Securities and Exchange Commission. The ruling allows constitutional objections to agencies' power to be brought in federal trial courts before the challenged enforcement actions are concluded in the administrative agency. The harm of being subjected to unconstitutional agency authority is considered a present injury and is impossible to remedy once the proceedings are over, which is when appellate review kicks in. Justice Neil M. Gorsuch agreed with the majority, but he did not adopt its reasoning, which he said was needlessly complicated. He argued that a federal law required allowing the suits at issue to be filed in federal court.

A month after this unanimous decision, the Supreme Court decided to take on another case which could deal yet another blow to the administrative state. In May 2023, the US Supreme Court agreed to review the case of *Loper Bright Enterprises v. Raimondo*, which directly challenges the Chevron deference doctrine. This could result in the doctrine being overruled altogether, or narrowed to clarify that a statute's silence on a topic is not the same as ambiguity and therefore does not mean that the Agency gains authority to interpret. The case involves a challenge to a rule issued by the National Marine Fisheries Service that requires the fishing industry to pay for the costs of government compliance observers on commercial fishing boats, despite the authorizing statute being silent on cost reimbursement. The Supreme Court's decision could constrain federal regulatory agency action going forward. The Supreme Court will consider whether to overrule Chevron or clarify its scope, with oral argument likely to occur next fall and a decision by Spring 2024.

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IN AN 8-1 DECISION THE SUPREME COURT PROBES THE LIMITS OF GARMON PREEMPTION

On June 1, 2023, the Supreme Court issued its Opinion in *Glacier Northwest v. International Brotherhood of Teamsters Local 174*, Case No. 21-1449 (2023), holding against the union in a state court tort action for destruction of property. The case stems from a strike in 2017. Glacier Northwest is a company that delivers ready-mix concrete. Workers went to work and had concrete poured into their trucks. The workers then went on strike and returned the trucks to the Employer's property and left the concrete trucks spinning to save the concrete. The Union claims this was at the direction of the Employer, whereas the Employer claims it was timed to deliberately destroy its property. There was no damage to the Employer's trucks; the cement was ruined. The Employer then sued their employees' Union in state court alleging intentional destruction of property.

The Washington State Supreme Court affirmed a lower court ruling dismissing the lawsuit because it was preempted by the National Labor Relations Act ("NLRA"), holding that the Employer's loss of product was, "incidental to a strike arguably protected by federal law." This is based on the Supreme Court's seminal decision of *San Diego Build Trades Council v. Garmon*, in which the Court created the now familiar concept of "*Garmon* preemption" – meaning that the NLRA (and thereby the jurisdiction of the National Labor Relations Board) preempts any state law whenever the lawsuit is based on an underlying action that is "arguably" either prohibited or protected by the NLRA. Garmon preemption is the main doctrine ensuring uniformity and federal supremacy in Labor Law. It has traditionally been seen as a safeguard against subjecting labor disputes to differing damages based on locales in which they occur, or the tribunal in which they are challenged.

Subsequent to the ruling by the Washington State Supreme Court, the National Labor Relations Board issued a complaint against the Employer, holding that the strike conduct was protected. In an 8-1 Decision issued by conservative Justice Amy Coney Barrett, the Supreme Court held that the case should have been allowed to proceed in state court beyond the Motion to Dismiss stage - "Because the union took affirmative steps to endanger Glacier's property rather than reasonable precautions to mitigate that risk, the NLRA does not arguably protect its conduct."

Many view this decision as a narrow decision on the facts of this case and under already settled law. Destruction of property during a strike was already not protected or preempted under federal law. Spoilage of goods, including perishables like milk or eggs, have in the past been ruled as incidental and foreseeable consequences of a strike. Between these two, the NLRB, "has developed the narrow requirement that striking employees must take reasonable precautions before or when they strike in order to forestall or address foreseeable, imminent, and aggravated injury to persons, premises, and equipment that might otherwise be caused by their sudden cessation of work." *Glacier Northwest, Inc.* (Jackson, J. *dissenting*).

As the lone dissenter, Justice Jackson dissented for two main reasons. First, subsequent to the Washington Supreme Court's Decision, the National Labor Relations Board issued a complaint holding that the strike conduct *was protected*. Second, she disagreed with the majority's view of the employees' actions. It was the Union's testimony that the Employer had told the employees to return the trucks and leave the drums running, as a concrete delivery company, the employees are always likely to have trucks full of potentially perishable concrete. She emphasized that potential economic harm to the Employer is part of the power of employees going on strike, stating: "Workers are not indentured servants, bound to continue laboring until any planned work stoppage would be as painless as possible for their master. They are employees whose collective and peaceful decision to withhold their labor is protected by the NLRA even if economic injury results." *Id.*

While the underlying case itself did not change any settled law and is likely to be settled after remand to the Washington Supreme Court, it is the concurrence of two Justices – Thomas and Gorsuch – in which they suggest that the Court should reconsider *Garmon* – that drew the most attention. If the Court were to do this, it could open up the floodgates to state court actions often with courts less experienced in labor law than the NLRB. While the most obvious harm may be in less union-friendly states, it could also allow more pro-union states to promulgate state laws that are less friendly to employers rather than the stability of the decisions of the NLRB.

> *“Garmon preemption is the main doctrine ensuring uniformity and federal supremacy in Labor Law.”*

PAY TRANSPARENCY IN JOB LISTINGS MAY BE COMING TO ILLINOIS

Illinois recently joined the growing movement of states in this country seeking to require businesses to disclose salary ranges in job advertisements. On May 17, 2023, a new pay equity bill (HB 3129) ("Bill") was passed by the Illinois legislature and is awaiting signature by Governor Pritzker. The Bill amends the Illinois Equal Pay Act, specifically providing that it is unlawful for an employer with 15 or more employees to fail to include the pay scale and benefits for a position in any job posting. If Governor Pritzker signs the Bill into law, it will take effect January 1, 2025.

As background, these types of transparency rules fall into a group of laws commonly referred to as "pay equity" laws. Supporters of these rules argue that they are designed to close the wage gap for minorities, specifically women and persons of color. Information about pay range would theoretically empower employees when negotiating for fair pay and help employers avoid discrimination. Support has led to some states[1] and cities instituting pay transparency laws, including Cincinnati and Toledo, which require employers with 15 or more employees to provide the pay scale to an applicant who has received a conditional offer of employment.

The Bill, which has already been amended once, requires businesses to comply with the following pay transparency requirements in job listings: (1) employers with 15 or more employees must include the pay scale and benefits in any job posting in Illinois and (2) if the employer uses a third party to publish a job posting, that third party is required to post the pay and benefit scale in the job posting. For purposes of this Bill, "pay scale and benefits" means the "salary or hourly wage range and a general description of the benefits and other compensation that the employer reasonably expects to offer for the position." The Bill also addresses promotional positions, specifically requiring an employer to announce, post or make known all promotional opportunities to all current employees within 14 days after the employer makes an external job posting. In addition to the above job listing requirements, employers must comply with record-keeping requirements.

It is important to note that the Bill does not require an employer to make a job posting; rather, it only requires that job postings note the range broadly, as long as the high and low numbers are provided in good faith and accurately reflect the employer's potential offer. To maintain compliance, applicable employers should ensure that their job postings list the appropriate pay and benefit range, and may include language that such ranges depend on a variety of factors such as a candidate's experience. Employers may also want to review their pay structure to ensure that the pay and benefit range is fair and market-based, which can be done through a pay equity audit.

The Illinois Department of Labor is empowered to initiate investigations of any alleged violations and provides that an employer would have seven days upon receipt of notice of a violation to remedy it. If the employer fails to become compliant, a range of civil penalties would be charged.

The Bill is currently under review in the Illinois Senate and could be subject to further changes. Our office will keep applicable clients updated on when the Bill is signed into law.

[1] Currently, California, Colorado, Connecticut, Maryland, Nevada, New York, Rhode Island and Washington have some form of a pay transparency law in place.

NLRB INVALIDATES CONFIDENTIAL NON-DISPARAGEMENTS CLAUSES IN SEVERANCE AGREEMENTS

On February 21, 2023, the National Labor Relations Board (the Board) issued a decision in McLaren Macomb, 372 NLRB No. 58 (2023), holding that, under the National Labor Relations Act (the Act), it is unlawful for employers to offer severance agreements that include broad confidentiality and non-disparagement provisions. It also made it an independent Unfair Labor Practice to merely propose such provisions, regardless of whether they are accepted or not.

This ruling initially left many employers struggling to determine how to utilize these otherwise standard and important terms of severance agreements without creating significant legal risk. On March 22, 2023, the Board's General Counsel, Jennifer Abruzzo issued a memorandum responding to inquiries raised about the impact of the decision (Memorandum GC 23-05). The GC clarified that confidentiality clauses designed to restrict the disclosure of proprietary or trade secrets for a defined period of time and based on legitimate business justifications, are lawful. Narrowly-tailored non-disparagement provisions that are "limited to employee statements about the employer that meet the definition of defamation as being maliciously untrue, such that they are made with knowledge of their falsity or with reckless disregard for their truth or falsity" may still be found lawful. The General Counsel's memorandum at least provided some clarity as to the scope of the NLRB's decision.

However, the memorandum introduced a concept that was not present in the NLRB's original decision: retroactivity. The memorandum clarified that the Board's Decision has retroactive application to existing contracts. Further, the memorandum stated that, while the proffer of an illegal severance agreement would likely be subject to the six-month statute of limitations period, "maintaining and/or enforcing a previously entered severance agreement with unlawful provisions" will be a continual violation such that an unfair labor practice charge would not be time-barred. The memorandum further explained that the decision applies to former employees and does "not depend on the existence of an employment relationship between the employee and the employer." If GC's Memorandum is correct, employers will need to reexamine every severance agreement it has entered into regardless of the NLRA's six-month statute of limitations.

There is a serious question whether the retroactivity is valid. Generally federal statutes and rules are prospective in nature only. And for good reason, as the United States Constitution affords protections against retroactivity under the Ex Post Facto Clause, Contracts Clause, Takings Clause, Bill of Attainder Clauses, and Due Process Clause. It is an open question whether the application of the new rule to existing contracts runs afoul of these protections. The Board has moved for enforcement of the decision in the United States Court or Appeals for the Sixth Circuit, and the matter is presently being briefed before that Court.

> *"The patient advocacy groups are demanding the federal government outlaw copay accumulator programs."*

LITIGATION SURROUNDING 'CO-PAY ACCUMULATOR PROGRAMS'

In August of 2022, three patient advocacy groups (the HIV + Hepatitis Policy Institute, the Diabetes Leadership Council, and the Diabetes Patient Advocacy Coalition) filed suit in the U.S. District Court for the District of Columbia challenging the legality of a rule from the Centers for Medicare & Medicaid Services ("CMS"), a division of the Department of Health and Human Services ("HHS").[1]

The rule in question stems from the 2020 Notice of Benefit and Payment Parameters published by CMS in April of 2019,[2] which allows insurers to avoid counting the value of drugmaker coupons toward patient out-of-pocket maximum and deductibles. Specifically, the rule states that "amounts paid toward cost sharing using any form of direct support offered by drug manufacturers to enrollees to reduce or eliminate immediate out-of-pocket costs for specific prescription brand drugs that have an available and medically appropriate generic equivalent are not required to be counted toward the annual limitation on cost sharing."[3] These policies are referred to as "co-pay accumulator programs."

For example, if a patient pays for their $500 co-pay for a month's supply of a prescription with a $450 coupon from the drug manufacturer, only the patient's $50 spent will count toward their deductible and annual out-of-pocket maximum. Essentially, direct financial assistance from drug manufacturers is excluded from a patient's annual limitation on cost sharing.

The patient advocacy groups are demanding the federal government outlaw copay accumulator programs, arguing that they inflate healthcare costs and restrict access to necessary medications. In their Complaint, they assert that co-pay accumulator adjustment programs will result in "increase[d] out of pocket costs to needy patients, decreased adherence to now-unaffordable prescription drug regimens, and greater systemic costs to the healthcare system and to the Nation's health."[4]

On the other hand, the HHS asserts that these manufacturer coupons and assistance programs "can add significant long-term costs to the health care system that may outweigh the short-term benefits of allowing the coupons, and counter-balance issuers' efforts to point enrollees to more cost-effective drugs." In other words, the HHS maintains that these assistance programs are a tactic by drugmakers to maximize their profits and challenge insurers' efforts to lower drug spending.

The America's Health Insurance Plans ("AHIP") recently filed an Amicus Brief in support of co-pay coupon accumulators in which it asserts that "unbounded drug manufacturer co-pay coupons are part of the problem – not the solution – to out-of-control drug prices."[5] In its Brief, the AHIP explains how co-pay coupons distort the market for big pharma profits and contends that accumulator programs allow the savings while mitigating market distortion.[6]

Several states have since enacted legislation prohibiting co-pay accumulator programs.[7] A bill has also been introduced in the United Stated Congress, H.R. 830, which is a reintroduction of the Help Ensure Lower Patient (HELP) Copays Act. The bill would require commercial health insurers to apply cost-sharing assistance from drug manufacturers toward patients' cost-sharing requirements, including meeting their deductibles.

For now, the case remains pending. With the competing interests of patients, pharmaceutical manufacturers, and pharmacy benefit managers, the future of cost sharing with respect to high-cost prescriptions remains unclear.

[1] *HIV and Hepatitis Policy Institute, Diabetes Patient Advocacy Coalition, and Diabetes Leadership Council vs. HHS, CMS, Xavier Becerra, and Chiquita Brooks-Lasure*, D.C. (No. 1:22-cv-2604).
[2] 84 FR 17454
[3] *Id.*
[4] *See* Complaint for Declaratory and Injunctive Relief, 1:22-cv-2604 at 4.
[5] *See* Brief of America's Health Insurance Plans as *Amicus Curiae* in Support of Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment (1:22-cv-2604-JDB)
[6] *See* Complaint for Declaratory and Injunctive Relief, 1:22-cv-2604 at 4.
[7] As of spring 2022, laws in 16 states and Puerto Rico address the use of co-pay adjustment programs by insurers or PBMs by requiring any payment or discount made by or on behalf of the patient be applied to a consumer's annual out-of-pocket cost-sharing requirement. Nat'l Conf. of State Legislatures, *Copayment Adjustment Programs* (February 23, 2023), available at https://www.ncsl.org/health/copayment-adjustment-programs#:~:text=As%20of%20spring%202022%2C%20laws,%2Dpocket%20cost%2Dsharing%20requirement

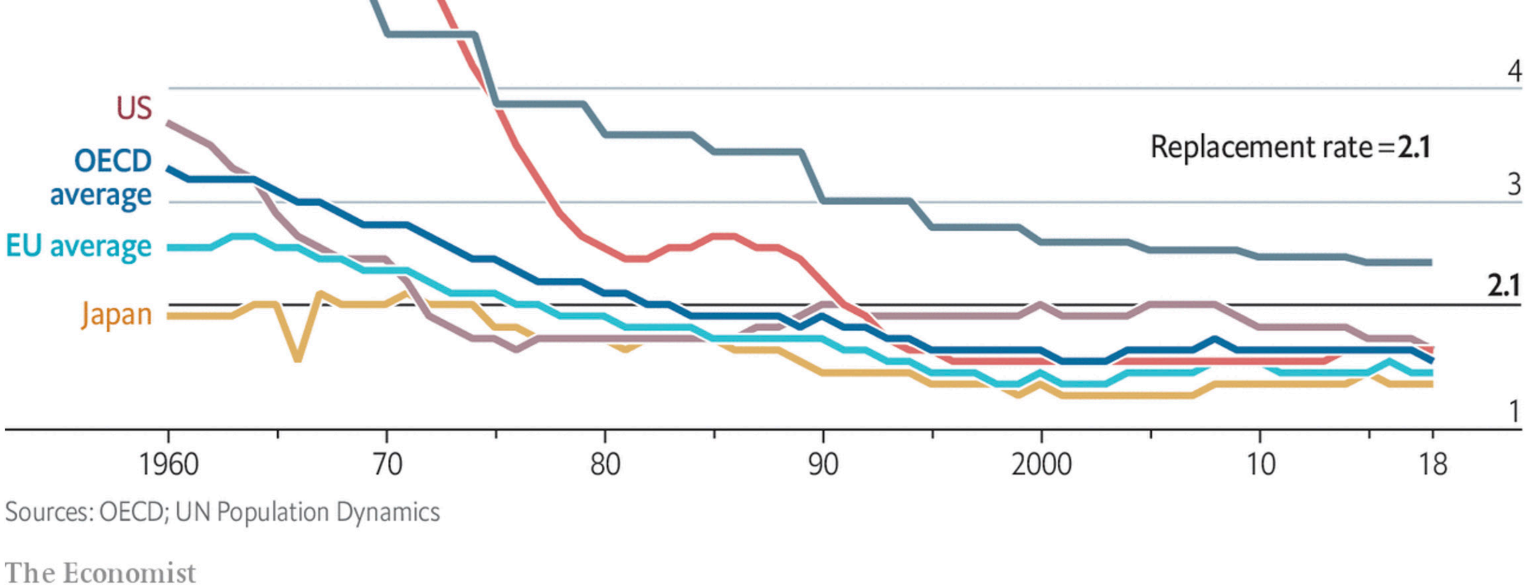
FRANCE'S PENSION REFORM

The newly enacted pension reform faced criticisms about the impact on certain groups of workers, especially women and those with unsteady jobs.

In 2023, French President Emmanuel Macron signed into law a change to the country's pension system. In the past, President Macron campaigned on reforming France's pension system and boosting the French economy. In summary, the reform was designed to target the viability of the French retirement system and increase the working age in the country. However, these reforms sparked widespread outrage and protests throughout the country.

The new law increased the legal retirement age in France from 62 to 64. This law was enacted to address France's demographic issues of an aging population and declining birth rates. France's previous pension system was facing the significant problem of having to support a growing number of retirees with only a smaller working-age population to support it. France's public finances are currently being strained by its relatively low retirement age, with the country's Pensions Advisory Council estimating a yearly deficit of approximately 10 billion euros ($10.73 billion) in the pension system from 2022 to 2032.

The newly enacted pension reform was met with great resistance. France's major labor unions organized several nationwide protests hoping



to ultimately defeat the new pension reform. The Labor Unions also pledged to continue to protest until the new reform is repealed. The protests took place in Paris and in several other cities located throughout France.

The newly enacted pension reform faced criticisms about the impact on certain groups of workers, especially women and those with unsteady jobs. Critics also claim that the increase in the retirement age would disproportionately affect workers in physically demanding jobs, who might have to retire early due to the physical strain caused by their work. Additionally, a recent study showed that 70% of France's population disagree with President Macron's pension reform and did not want the retirement age to be raised from 62 to 64. Of course, it is hardly surprising that people are against working longer. However, it is also predictable that people don't want to pay higher taxes. You can find French polls that support raising taxes on higher-income people, but it is also clear that very few ever support paying higher taxes themselves. So predicably very few want lower benefits and very few want to pay higher taxes either.

The baby bust in the developed world is a real thing. See the chart at left showing the US, the EU, Japan, and China all with birth rates far below replacement level and continuing to fall. The baby bust coupled with longer life expectancies is going to present every public retirement system with a tough choice between benefit levels/retirement ages vs. tax rates. The bottom line is that most public retirement systems either need to reduce benefits, increase tax rates, or do both as the current level of taxation is not sufficient to support the current level of benefits. One thing is for certain, no matter what happens there will be lots of upset people. To our knowledge, the French are the first in the developed world to take some type of action. While you may not agree with the approach, you have to admire the pluck it took to act. Most of the world sits paralyzed while the IOUs mount. The French increase in retirement age looks like the first shoe to drop.

PREVENTING POTENTIAL FIDUCIARY LIABILITY IN ERISA LITIGATION

The Employee Retirement Income Security Act of 1974 ("ERISA") imposes extraordinary responsibilities on fiduciaries when managing multiemployer benefit plans. Under ERISA, fiduciaries handling the investment of participants' retirement funds must discharge their duties with the care, skill, prudence, and diligence that a reasonable professional in that area would use. Failure by a fiduciary to adhere to these duties could lead to litigation, which has become an increasingly common method for plan participants and beneficiaries to hold fiduciaries accountable for their ERISA obligations.

A fiduciary's duty of prudence is regularly challenged in litigation concerning subpar investment options provided by a fiduciary to members for their 401(k) and other defined contribution plans. Recently, in the case *Forman v. TriHealth, Inc.*, three employees sued their employer and their 401(k) Plan's administrative committee alleging that the employer and administrative committee breached their duty of prudence by failing to monitor the 401(k) Plan's investments. 40 F.4th 443, 447 (6th Cir. 2022). The employees' imprudence claims consisted of three main arguments: (1) the employer's investment options had excessive administrative fees; (2) the employer's investment options had worse performance over a three-year period; and (3) the employer offered the employees pricier retail shares of mutual funds when those same investment management companies offered less expensive institutional shares of the same funds to other retirement plans. *Id.* at 449-50. The lower court dismissed the employees' complaint for failing to state a claim, and the employees appealed. *Id.* at 447.

When assessing a fiduciary's prudence, the Court focused on "each administrator's real-time decision-making process, not on whether any one investment performed well in hindsight." Id. at 448. Furthermore, plan administrators have "considerable discretion" in choosing the funds they offer and do not have to pick the lowest-cost fund if a more expensive fund has a reasonable prospect to outperform it. *Id.* at 449.

The United States Court of Appeals for the Sixth Circuit found that the employees' first two imprudence claims were properly dismissed, but that their third argument stated a plausible claim that the employer acted imprudently by offering them more expensive mutual fund shares when shares with the same investment strategy, management team, and investments were available to their retirement plan at lower costs. The Court explained that the employees' allegations permit the reasonable inference that the employer failed to use the advantages of being a large retirement plan to take advantage of cheaper share classes and therefore materially decreased the value of the employees' retirement savings. Id. at. 450.

In other words, the Court found that even if a prudent fiduciary makes a wide range of valid investment decisions available in a given year, only an imprudent investor would offer a more expensive share when he could offer a functionally identical share for less.

To defend themselves against similar ERISA litigation and prevent potential fiduciary liability, fiduciaries should maintain accurate and complete plan documentation. Pursuant to the provisions of ERISA, plan sponsors and fiduciaries must document all decisions and actions related to the plan. This includes documenting investment decisions, amendments to the plan, and communications with participants. If litigation were to occur, these documents could serve as crucial evidence to bolster a fiduciary's defense that a decision was prudently made.

Another strategy that can be used by fiduciaries to prevent potential fiduciary liability is to conduct regular plan reviews. Regular plan reviews are used to confirm that the plan is being administered in compliance with ERISA's enumerated fiduciary duties. A thorough plan review would include reviewing the plan's investments, fees, administrative procedures, and conducting periodic reviews of plan service providers.

Regular plan reviews can help detect potential issues with the plan before they become major liabilities. For example, a review might identify that a plan is paying excessive fees for certain services when compared to other comparable plans or that investment fees being charged to participants is too high. Regular reviews should provide plan sponsors and fiduciaries sufficient time to take corrective action to address whatever issues may be discovered before they escalate.

MICHIGAN ROLLS BACK "RIGHT-TO-WORK" LAW AND REINSTATES PREVAILING WAGE

In 2012, a Republican-controlled Michigan legislature passed a "right-to-work" statute, which made Michigan the twenty-fourth state to pass such legislation. At the time, the passage came as a surprise to many, given Michigan's role in the birthplace of the US Labor Movement and serving as the home of the UAW. Since 2012, Wisconsin, West Virginia, and Kentucky have passed their own "right-to-work" legislation, taking the total to twenty-seven states as of 2017. Missouri's legislature passed a "right-to-work" statute in 2018, but a subsequent ballot measure saw an overwhelming defeat, in which Missouri voters voted 2-1 against the "right-to-work" statute.

In 2022, Democrats took over the entire Michigan State House for the first time in forty years and announced that it was one of their priorities to repeal the "right-to-work" legislation. The last time a state repealed such legislation was in 1965 when Indiana repealed its statute. Indiana subsequently passed another right-to-work statute in March 2012, shortly before Michigan. According to research, "right-to-work" legislation leads to an average decrease in unionization rates of 4% and an across-the-board decrease in wages of 1% five years after passage. In construction, education, and public administration, highly unionized industries, the decrease in wages is even starker, falling on average 4% over five years.[1]

With respect to Michigan specifically, experts say it is difficult to tell what impact the "right-to-work" legislation had. While unionization did fall since the passage, unionization was falling before the law, and it coincided with the impact of the fallout of the bankruptcies of two of the "Big Three" automakers, Chrysler and GM.[2] The same can be said of the supposed impact on the economy and the growth of business that is often touted by proponents of the legislation: "Right after 'right-to-work' was put into place in 2013, we saw stories of companies that were willing to look at Michigan that hadn't been willing to look at Michigan before," Isely said. "But if we pull ourselves out and look at the number of jobs created, or the number of new businesses created in Michigan, we don't see any measurable change before or after the law."[3]

On March 24, 2023, Michigan Governor Gretchen Whitmer signed legislation to repeal "right-to-work," making Michigan the first state to do so in fifty-eight years. This leaves 26 states with "right-to-work" laws and 24 states without.

Additionally, in 2018, Michigan's prevailing wage law was repealed. Prevailing wage sets wage rates on public construction projects. In 2021, Governor Whitmer had already restored prevailing wage on state funded projects. On March 24, 2023, Whitmer also signed a law reinstating a prevailing wage law which will now apply to local governments in addition to state projects.

[1] National Bureau of Economic Research, *Impacts of The Right-to-Work Laws on Unionization and Wages*, Digest No. 8, August 2022.
[2] https://www.woodtv.com/news/michigan/experts-right-to-work-had-almost-no-affect-on-michigan-economy/
[3] *Id.* Quoting Paul Isely, Associate Dean of Grand Valley State University's Seidman College of Business.

JOHNSON + KROL'S NEWEST MEMBER: KARL E. MASTERS

Johnson + Krol is excited to announce the promotion of Karl E. Masters to the position of Member within the firm. This well-deserved recognition reflects Karl's exceptional skills and unwavering commitment to his clients. His expertise and impressive accomplishments make him a valuable addition to the ownership team at Johnson + Krol.

Karl E. Masters joined Johnson + Krol in 2017 and brought with him his years of labor law experience. Since joining he has helped us significantly improve and grow this important part of our business.

Karl E. Masters graduated *cum laude* from Loyola University in Chicago and later obtained his law degree with high honors from the Chicago-Kent College of Law in 2002. His outstanding performance led to his induction into the Order of the Coif, a prestigious national legal honor society. Furthermore, Karl holds a certificate in Labor and Employment from the Chicago-Kent Institute for Law in the Workplace, further solidifying his expertise in the field.

Johnson + Krol proudly celebrates Karl's promotion to Member, acknowledging his significant contributions to the legal profession and his clients. His dedication, legal acumen, and commitment to achieving the best possible outcomes for his clients have earned him the respect and admiration of his colleagues.

"Karl E. Masters exemplifies the qualities we value at Johnson + Krol: excellence, integrity, and a steadfast commitment to our clients," remarked Dennis R. Johnson, Managing Member and founding partner of the firm. "We are thrilled to have him as a Member and look forward to his continued success within our firm."

With Karl E. Masters as the newest Member at Johnson + Krol, the firm further strengthens its position as a premier advocate for labor. Congratulations, Karl, on this well-deserved achievement!

"Karl E. Masters exemplifies the qualities we value at Johnson + Krol: excellence, integrity, and a steadfast commitment to our clients."
– Dennis R. Johnson

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