

## **WEALTH HEALTH: Court ruling on 401(k)s could leave some workers worse off**

The U.S. Supreme Court prescribed some fixes to the retirement-savings world recently, but the long-term side effects could have some workers thinking they've been given bad medicine.

The basic idea here is a simple one that impacts all retirement savers: Workers should have access to the best fee structures available for their retirement plan. The company providing or overseeing the plan has a responsibility to employees to make sure that the investments – and most importantly the fee structure on the plan – is the best available.

It's a well-meaning decision that, like many things with good intentions, could go awry, especially as it impacts workers; in the end, it could mean that a lot of workers at small businesses wind up without access to a retirement plan or have worse options than are available today.

The high court ruled unanimously in favor of current and former workers at Edison, a California-based utility, who claimed that the retail-class mutual funds selected as investment options by plan fiduciaries were imprudent because they charged higher fees than identical institutional-class funds available to larger investors.

The case also poked a hole in the six-year statute of limitations that applied to employers and plan representatives under ERISA, the Employee Retirement Income Security Act. Plan fiduciaries in the case picked some of the retail-class funds as plan options in 1999; the case was filed more than six years later, outside of the ERISA statute of limitations.

The results on this point are good ones. Plan sponsors now have an ongoing responsibility to monitor a plan and to make sure that if something better comes along – an improved fee structure, lower-cost alternatives and more – the plan keeps up with the times. Workers now can more easily sue employers whose plans are not managed with the employee's best interest placed first.

The case focused on fee structures rather than investment performance, but there's a good chance it will force plan managers to make sure they aren't

hanging on to below-average options for too long, forcing regular upgrades to the options offered to workers based on what has been working recently. The potential problems from the ruling are much harder to see. Small employers may decide not to offer workers a savings plan. No one really wants to go have a high-cost 401(k) plan, but getting “the best available plan” typically means that the employer needs to lay out more money.

The entrepreneur with a small business often is looking to create a benefit for themselves that they also must extend to employees. They’re creating a real benefit – often with matching monies – but they are settling for higher-cost index funds or more-expensive share classes because that’s what their retail store or small service company or mid-sized franchise business can afford.

**By Chuck Jaffe**