

# Compliance Reminder for Executive Top Hat Plans

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**PRACTICES** Employee Benefits and Executive Compensation

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Plan sponsors of nonqualified deferred compensation plans (often referred to as “top hat” plans) maintain such plans because they provide tax and economic benefits to covered executives without being subject to many of ERISA’s stringent requirements, including, without limitation, the rules regarding holding the assets in a trust, vesting, fiduciary standards, and nondiscrimination testing. A recent Sixth Circuit Court of Appeals case reminds us that these plans must satisfy unique compliance requirements to continue to remain exempt from such ERISA provisions.

This case determined that plan participants did not have a state law fiduciary duty claim because ERISA preempts state laws, provided that the top hat plan complies with certain requirements (as discussed further below). Further, the court indicated that Congress’s decision to exempt top hat plan sponsors from ERISA’s fiduciary duty requirements shows that participants must protect themselves through contract, and not state law claims, and need to pursue such contractual claims through ERISA’s exclusive remedial scheme.

As a reminder, sponsors of top hat plans must meet the following requirements to remain exempt from certain ERISA requirements and also preserve ERISA preemption of state law fiduciary duty and other types of claims:

- **Clear Designation of the Eligible Executives.** Top hat plans must be maintained “primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees.” This group should be designated by the plan sponsor and clearly identified in the plan document, as ERISA and its regulations do not define what “select group” means.
- **Unfunded Trust.** A top hat plan trust must be unfunded and subject to the claims of the employer’s general creditors.
- **Top Hat Plan Statement Filing.** As we previously reported [here](#), a top hat plan must file a top hat plan statement with the DOL within 120 days of the plan’s effective date. Plan sponsors may confirm this by visiting the DOL’s filing website [here](#).

The case is *Aldridge v. Regions Bank*, No. 24-5603, 2025 WL 1983483 (6th Cir. 2025).