

DOL Approves the Use of Forfeitures to Offset Employer Contributions

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PRACTICES Employee Benefits and Executive Compensation

In a lawsuit currently under appeal at the U.S. Court of Appeals for the Ninth Circuit, the court has been asked to decide whether the plan administrator violated its fiduciary duties of prudence and loyalty under ERISA when it chose to use forfeited employer contributions to offset future employer contributions (rather than pay administrative expenses). The underlying plan document permits forfeitures to be used in either manner as determined by the plan administrator. As we previously reported [here](#) and [here](#), this has been a popular new fiduciary claim against 401(k) plan sponsors.

In a positive twist for employers, the new Secretary of Labor decided to voice the DOL's position. In its amicus brief filed with the court, the DOL adopted the formal position that "a fiduciary's use of forfeited employer contributions in the manner alleged in this case, without more, would not violate ERISA." In coming to its conclusion, the DOL acknowledged that the practice of using forfeitures to offset future employer contributions has been long-established. The DOL further explained that the decision to apply forfeitures to pay administrative expenses would not necessarily result in more employer contributions and a larger benefit for participants. While the DOL's opinion may carry less weight in the courtroom after last year's elimination of the deferential Chevron Doctrine, the amicus brief should have a positive collateral effect for employers. As the agency charged with interpreting and enforcing ERISA, the DOL's formal position will likely make future similar legal actions riskier and therefore less appealing for plaintiffs' attorneys.

Brief of Sec'y of Labor, *Hutchins v. HP Inc.*, No. 25-826 (9th Cir. July 9, 2025) is available [here](#).