

## 401(k) Plans Put on Notice As Investor's Suit Advances

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By Martha M. Hamilton  
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The Supreme Court's ruling on the mismanagement of a 401(k) plan last week isn't likely to have broad ramifications for investors saving for retirement. But it does highlight ongoing efforts to expand protections for investors managing their own retirement accounts.

About 70 million people now trust about \$3 trillion in retirement savings to 401(k) plans. The accounts weren't intended to replace traditional pensions, but as the economy has evolved, 401(k)s have assumed a primary role in preparing workers for retirement.

"Before everybody just saw it as a savings plan offered employees, and now the focus has been on the fact that this is the employee's retirement plan," said Robyn Credico, director of defined contribution consulting for Watson Wyatt Worldwide. "I think both the plan sponsors and the government are paying more attention because of that."

With their growing popularity, 401(k)s have been held increasingly accountable for their shortcomings. Some individuals have sued over funds stolen or mismanaged. Class-action lawsuits have been filed over excessive fees or losses from investments in company stock.

Most complaints about problems with 401(k) plans don't reach the level of lawsuits, said experts who help companies design or administer retirement savings plans. If you believe a mistake was made in your 401(k) plan, the first place to go is to your human resources department or to the summary description of the plan. That's where you will be able to find the process for filing a complaint.

In some cases, questions can be resolved by calling the plan's toll-free number, said Valerie M. Kupferschmidt, employee benefits counsel for [Hewitt Associates](#). If, for example, you requested a change in allocation and it didn't occur, the reason may be the fine print rather than malicious intent. Kupferschmidt said the plan's rules may say, for example, that a change cannot be made until the first day of the month after the investment choice was made.

"Most of these issues are solved under the plan's administrative appeal process," Kupferschmidt said. "The plan administrator and the employee are going to go back and look at what was done, and if it's wrong, they'll fix it."

The Supreme Court case zeroed in on an instance of mismanagement that an employee claimed resulted in a significant loss to his 401(k) account. Investor James LaRue claimed that his former employer failed to act on his instructions to shift his savings from one account to another, costing him \$150,000. At issue was a provision in federal pension law written before 401(k) plans were proposed and which had been held to prevent individual 401(k) account holders from filing claims.

The [U.S. Court of Appeals](#) for the 4th Circuit in [Richmond](#) had dismissed LaRue's suit on the basis that the law didn't allow suits on losses to individual participants, only suits on overall losses to the plan. The Supreme Court said, in effect, that any loss in value, regardless of how few individuals it affected, was a loss in value to the overall plan. Now LaRue gets to go forward with his lawsuit, which will determine if there was a loss and, if so, who was responsible.

Peter K. Stris, a professor at Whittier Law School in [Los Angeles](#) who represents LaRue, said that if the court had decided against LaRue, the decision would have had broad ramifications because it would have prevented the Labor Department or companies that sponsor plans from suing if funds were stolen or mismanaged.

Martha Priddy Patterson, a director with Human Capital Practice, part of Deloitte Consulting, said she thought the court decision would also cause employers to take a second look at plan administration. "It will focus plan sponsors on using people who get it right and get it right the first time," she said.

The high court's decision is expected to have little impact on lawsuits that claim 401(k) plan fees are too high or that employees lost money on company stock. That's because those are filed as class-action suits rather than as complaints by individuals.

More than a dozen cases have been filed against major employers including [Lockheed Martin](#) and [Kraft Foods](#) alleging that administrative fees for 401(k) plans were too high and cut in to investment earnings.

The spotlight on 401(k) shortcomings has driven efforts at improvement. Coverage for employees has been expanded and enrollment has been made easier. The guesswork of savings choices also has been reduced by providing employees with default investments that adjust automatically as they age.

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