# ERISA Fiduciary Breach Claims Dismissed in Prescription Drug Lawsuit

On Jan. 24, 2025, a U.S. District Court for the District of New Jersey dismissed two claims in a class-action lawsuit filed against Johnson & Johnson (J&J), which alleged that the company breached its fiduciary duties under ERISA by mismanaging its prescription drug benefits plan and costing the plan and its participants millions of dollars due to higher out-of-pocket costs for prescription drugs and higher premiums, among other things.

In dismissing the two fiduciary breach claims, the court ruled that the plaintiff (an employee of J&J) lacked standing to bring a lawsuit. The court found the plaintiff's first claim, that she paid more in premiums due to the defendants' purported breach of fiduciary duty, did not sufficiently show evidence of an injury. Further, the outcome of the lawsuit would not affect the plaintiff's future benefit payments, and the plaintiff failed to show that the defendant's specific conduct resulted in higher premiums.

Regarding the plaintiff's second claim that she paid higher prices for drugs under the plans and thus paid more out of pocket, the court acknowledged that she suffered an injury that was traceable to the defendants' alleged ERISA violations. Notwithstanding, the plaintiff lacked standing based on this injury because a favorable decision would not be able to compensate her for the money she already paid, given that she had reached her prescription drug cap for each year asserted in the complaint.

While the J&J ruling can be viewed favorably for employers in their roles as plan sponsors, the outcome of fiduciary litigation that was filed after the J&J case remains to be seen. Factors such as plan design and the specific allegations regarding how the defendants breached their fiduciary duties could result in different outcomes.

# DOL Addresses Interaction Between the Federal FMLA and State PFML Programs

In Opinion Letter FMLA 2025-01-A, the U.S. Department of Labor (DOL) addressed the interaction between state and local paid family and medical leave (PFML) and leave taken under the federal Family and Medical Leave Act (FMLA).

The FMLA provides 12 weeks of unpaid, job-protected leave per year for specified family and medical reasons. While FMLA leave is unpaid, the law allows the employee to elect, or an employer to require the employee, to substitute accrued employer-provided paid leave (such as paid vacation or paid sick leave) for any part of the unpaid FMLA leave.

The DOL's opinion letter states that although the FMLA statute and regulations do not address state or local PFML, employers must designate PFML as FMLA leave when it is also FMLA-qualifying. Furthermore, the employer and employee may agree to use the employee's accrued paid leave from the employer to supplement the PFML payments, as permitted by state law.

However, the FMLA's substitution provision does not apply. Neither the employer nor the employee may unilaterally require that employer-provided accrued paid leave run concurrently with PFML taken for an FMLA purpose. Other than the substitution provision, all of the protections of the FMLA, including its anti-retaliation provisions, apply during the time the PFML and the FMLA leave run concurrently. Additionally, the substitution provision would apply for any remaining FMLA leave once the state or local paid leave is exhausted.