



News & Types: Employment, Labor & Benefits Update

# Masuda Funai Employee Benefits Newsflash - Supreme Court Rules in Northwestern University's Retirement Plans Case

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On Monday, January 24th, in a unanimous decision, the Supreme Court of the United States vacated and remanded Northwestern University's retirement plans case back to the U.S. Court of Appeals for the Seventh Circuit. Northwestern University provided two defined contribution retirement plans for participants. In 2016, three participants (current and former) sued claiming that Northwestern University, its Retirement Investment Committee, and the individual officials who administer the two plans, violated ERISA's duty of prudence by (1) failing to monitor and control the fees paid for recordkeeping, (2) offering a number of mutual funds and annuities in the "retail" class which carried higher fees versus "institutional" class funds, and (3) offering too many investment options, thereby causing participant confusion and poor investment choices.

In vacating the judgement, the Supreme Court held that the Seventh Circuit "erred in relying on the participants' ultimate choice over their investments to excuse allegedly imprudent decisions by respondents." In doing so, the Supreme Court reminded all plan fiduciaries of its prior guidance in *Tibble*, wherein the Supreme Court stated:

"even in a defined-contribution plan where participants choose their investments, plan fiduciaries are required to conduct their own independent evaluation to determine which investments may be prudently included in the plan's menu of options. If plan fiduciaries fail to remove imprudent investments from the plan in a reasonable time, they breach their duty."

The Supreme Court's opinion serves as a reminder to all plan fiduciaries that simply offering a number of funds ("including types of funds plaintiffs wanted"), does not excuse plan fiduciaries from ensuring that the chosen funds are proper, and the fees are reasonable. Because many plan providers (Fidelity, Prudential, Principal, etc.) often guide the discussion on fund choices, plan fiduciaries would be wise to consult with an investment advisor to meet their fiduciary obligations.