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Amazon Faces Allegations of Mismanaged Funds



Amazon.com Inc. and the administrative committee overseeing its 401(k) savings plan have been hit with a class-action lawsuit alleging improper management of employee forfeiture funds. The lawsuit, *Curtis v. Amazon.com*, was filed in the U.S. District Court for the Western District of Washington and claims that Amazon fiduciaries engaged in self-dealing by using forfeited plan assets to

reduce the company's own contributions rather than lowering administrative fees for participants.

According to plaintiff Cory Curtis, who is being represented by Terrell Marshall Law Group PLC, Amazon misappropriated millions of dollars in forfeited 401(k) assets between 2018 and 2023. The complaint argues that instead of using the funds to offset administrative expenses—such as recordkeeping fees, investment management fees, and transaction fees—or redistributing them to eligible participants, Amazon applied them toward its future employer contributions, effectively saving the company millions.

Amazon's 401(k) plan is among the largest in the country, with over \$17 billion in assets and more than 1.3 million participants, according to its 2022 Form 5500 filing. The plan was previously administered by Vanguard Fiduciary Trust Co. until January 7, 2020, when it transitioned to Fidelity Investments, which remains the recordkeeper as of the end of 2023. In 2023, the plan also incurred administrative expenses by paying Strategic Advisors—an affiliate of Fidelity—direct compensation for plan-related services.

The lawsuit claims that Amazon's plan agreement permits fiduciaries to utilize forfeited funds in one of three ways: to restore forfeited accounts, to pay administrative costs, or to lower future matching payments. However, rather than reducing participant fees, the complaint argues that Amazon largely utilized the money to offset its own contributions.

The use of 401(k) forfeitures is the subject of a larger wave of litigation, including this case. Since 2023, over 30 similar lawsuits have been brought against large companies, including Qualcomm Inc., HP Inc., and Honeywell International Inc. Courts have ruled in favor of plan sponsors, such as BAE Systems Inc., Thermo Fisher Scientific Inc., and Clorox Co., dismissing many of these lawsuits.



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Legal and industry experts have expressed skepticism about the lawsuit's merits. Daniel Aronowitz, president of fiduciary insurance firm Encore Fiduciary, argues that these cases are attempts to exploit ERISA regulations. He highlights that Amazon's plan features some of the lowest fees in the country, with recordkeeping fees set at just \$21 per participant. Additionally, Vanguard target-date funds are priced between three and four basis points, which is significantly lower than the industry average. "This is just plaintiff law firms trying to weaponize ERISA, and that's what's happening in the modern era with the surge of cases in the second half of 2024," Aronowitz says. "We find [it] really offensive for Amazon plan fiduciaries to be accused of somehow harming participants. They've done everything to ensure the lowest possible fees for their participants."

In 2023, the IRS reiterated that 401(k) forfeitures may be utilized for participant allocations, plan costs, or employer contributions. In spite of this, the lawsuit demands that Amazon disgorge all profits it allegedly made from managing forfeited cash, fire fiduciaries who are believed to have violated their obligations, and take additional corrective action.

Amazon spokesperson Montana MacLachlan responded to the lawsuit, stating, "While we're still reviewing the details of this case, we believe these allegations lack merit. We look forward to proving that through the legal process."

The growing number of forfeiture-related lawsuits has raised concerns about regulatory oversight. Aronowitz criticized the Department of Labor (DOL) for allowing what he calls "regulation by litigation," arguing that the agency should step in to clarify its position. "The Department of Labor and the IRS have regulations that have blessed this practice [of allocating forfeitures to employer contributions] for years and years," he says. "What needs to happen is they need to consolidate these cases before one judge and get one ruling."

As the legal battle unfolds, the case against Amazon could set a precedent for how courts interpret the use of forfeited funds in large retirement plans. If the lawsuit proceeds, it may influence fiduciary practices across the industry and prompt further regulatory scrutiny.

Sources:

<https://www.plansponsor.com/amazon-accused-of-mismanaging-millions-of-401k-forfeiture-funds/>

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