

## Supreme Court Clarifies "Actual Knowledge" Requirement for Shortened ERISA Statute of Limitations

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Employers and plan fiduciaries should take careful note of a recent ruling issued by the United States Supreme Court which may prompt increased Employee Retirement Income Security Act ("ERISA") litigation and otherwise alter the landscape of ERISA challenges.

Under ERISA, a plan participant generally has six years to file suit alleging a fiduciary breach. However, the six-year window is reduced to three years when employees have "actual knowledge" of the alleged fiduciary breach. On February 26, 2020, the Supreme Court, in *Intel Corp. Inv. Policy Comm. v. Sulyma*, construed the "actual knowledge requirement" and unanimously decided that ERISA's three-year statute of limitations did not apply where the participant at issue did not recall having read relevant information about plan investments, despite the fact that the plan's investment information was posted online and ERISA-required disclosures of such information were provided. Distinguishing actual knowledge from hypothetical knowledge, the *Intel* Court stated that the plain meaning of the phrase "actual information" requires a plaintiff to "be aware" of the alleged breach and that receipt of information by email/mail or visiting a website with information posted is not sufficient if the employee neither reviews the plan information nor remembers reviewing the information.

**What does this mean for employers and other plan fiduciaries?** The decision highlights that employers, plan administrators, and other plan fiduciaries cannot necessarily rely on merely providing participants with ERISA's required disclosures as a means of implicating ERISA's reduced three-year statute of limitations. However, the decision also notes that administrators are not prohibited from proving actual knowledge through the "usual ways," such as binding depositions, inferences of "actual knowledge" or evidence of "willful blindness." As such, employers should consider bolstering their practices regarding how employees are informed of relevant plan information, such as investment options, if they wish to reduce the window to file suit. For example, if an employer is able to produce evidence that the employee visited the plan webpage or attended a meeting that discussed relevant investment options, then an inference of "actual knowledge" could be drawn or "willful blindness" could be shown. Signed acknowledgments of having received, read, and understood plan documents may also prove valuable to the plan fiduciary should litigation ensue. As always, please feel free to contact your Miller Canfield attorney if you have questions about the Court's decision or bolstering your ERISA disclosure practices.