

# ERISA Class Actions Soar in 2026 as New Legal Theories Emerge

April 13, 2026, 5:00 AM EDT

---

## Summary by Bloomberg AI

AI Generated



- Employers are bracing for another year of fast-expanding litigation over their retirement and health-care plans, with new ERISA class actions coming almost twice as fast as in previous years.
- The surge in litigation is partly driven by how well plaintiffs' attorneys have fared in getting their ERISA cases certified as class actions, with a 95% success rate in 2025.
- New frontiers in ERISA litigation include claims targeting investment performance, health plan tobacco penalties, climate risk, and alternative assets, with plaintiffs' attorneys seeking class settlements in these areas.

Employers are bracing for another year of fast-expanding litigation over their retirement and health-care plans, with new ERISA class actions coming almost twice as fast as in previous years.

Nearly 70 proposed class actions were filed under the Employee Retirement Income Security Act in the first three months of 2026, up from less than 40 during the same periods in both 2025 and 2024, a Bloomberg Law analysis found. The surge is partly fueled by the high success rate by the plaintiffs' bar in securing class status, which raises pressure to settle and encourages additional lawsuits.

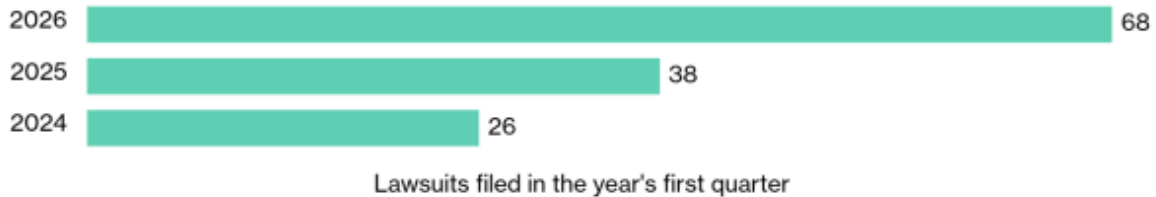
While challenges to 401(k) fee levels and forfeiture usage have dwindled amid mixed lower court rulings and pending appeals, new frontiers include claims targeting investment performance, health plan tobacco penalties, climate risk, and alternative assets.

ERISA—the federal law governing workplace benefits like retirement and health-care plans—has been an area of growing success for plaintiffs' attorneys seeking class settlements, said Gerald L. Maatman Jr., a partner at Duane Morris LLP and chair of its class action defense team.

“More skilled plaintiffs’ lawyers are looking into the ERISA space because it’s a space where they’re seeing success and converting their case filings into high-level settlements,” he said.

## Hammered by litigation

ERISA class action filings are up substantially in early 2026



Source: Bloomberg Law

Bloomberg Law

## Success Rate

The surge in litigation is partly driven by how well plaintiffs’ attorneys have fared in getting their ERISA cases certified as class actions, said Maatman, who edits his firm’s annual report on class actions.

ERISA plaintiffs seeking class certification were successful 95% of the time in 2025, which is an improvement over both 2023 and 2024, according to Maatman. This rate is notably higher than that seen in other areas of law, including securities fraud, antitrust, and wage and hour cases, he said.

“This high certification rate more often than not leads to settlements, and good settlements beget copycat cases,” Maatman said.

## Investment Performance

Twenty ERISA class suits filed in early 2026 involve target-date funds, which gradually shift investment strategies as workers approach retirement. The cases criticize the performance of specific suites of funds, arguing they should have been swapped for better alternatives.

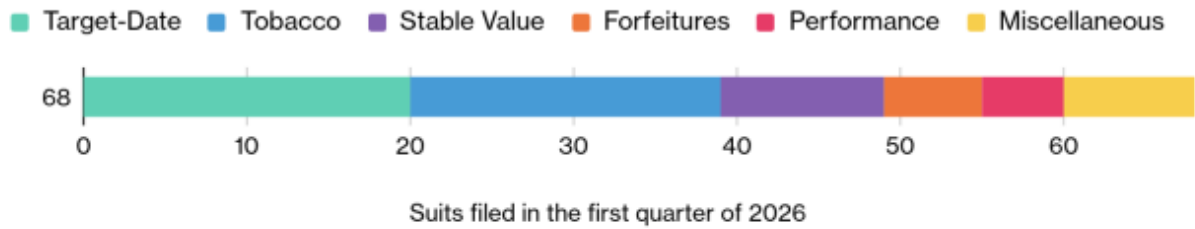
More than a dozen of these lawsuits center on target-date funds from American Century Investments. None of the cases name American Century as a defendant, and prior challenges to the company’s target-date funds have spurred mixed results in court.

Many of the complaints use substantially similar language and graphics.

“They’re copying and pasting the same allegations against a series of different companies,” said Richard Nowak, co-leader of ERISA litigation for Mayer Brown LLP. “You’re seeing more of that copycat-style complaint today than you used to.”

## Varied theories

Influx of ERISA class filings test 401(k) funds, smoker fees



Source: Bloomberg Law

Bloomberg Law

Another 10% of recent filings involve stable value funds, which are designed to provide modest, guaranteed returns while protecting against losses. In these cases, workers say their employers could have gotten them better returns with a different fund.

It remains to be seen how many stable value and target-date fund lawsuits will survive a motion to dismiss, but employers are well-positioned to win if the cases advance further, Nowak said.

“If the plan sponsors targeted in these lawsuits actually litigate these cases to summary judgment or trial, I think they will win on both of those theories,” he said. “The question is, how many plan sponsors will settle? Because that’s what the plaintiffs want; they don’t want to go to trial.”

### Smoker Penalties

More than a quarter of early 2026 filings involve health-care plans that charge extra fees to employees who use tobacco products. Federal law allows health plans to penalize smokers if certain conditions are met, and courts have reached different conclusions in cases accusing employers of mismanaging these programs.

This mixed reaction has provided fertile ground for a spate of new filings, said Lindsey H. Chopin, a principal with Jackson Lewis PC in New Orleans.

“With that type of variation across opinions, it’s not surprising that those are going to keep getting filed at a pretty rapid pace until there’s some sort of consensus or appellate decision,” she said.

Appeals involving tobacco penalties are pending in the First and Second circuits.

### Forfeiture, Fee Slowdown

Nearly 100 lawsuits challenging how employers handle forfeited money in their 401(k) plans have been filed over the past three years, but new cases have slowed considerably, with just half a dozen forfeiture lawsuits filed in early 2026.

That slowdown could stem from the evolving nature of this litigation, in which dozens of district judges—but no federal appeals courts—have ruled on forfeitures. Early rulings have tended to favor employers, and appeals are pending in at least five circuits.

“It feels like the plaintiffs’ bar is holding on bringing new forfeiture cases until the appellate courts rule later in the year,” Chopin said.

Challenges to retirement plan fees—once the bread and butter of ERISA class litigation—have also slowed significantly. A handful of new cases target 401(k) fees in some capacity, but just a single class lawsuit filed in early 2026 is primarily focused on fees.

### **Looking Forward**

As ERISA litigation evolves, new frontiers could include the climate-related risks posed by specific 401(k) funds—a theory that sparked a novel lawsuit in March—and the potential for retirement plans to hold alternative assets like private equity and cryptocurrency, which has been championed by the Trump administration.

Chopin, who represents employers and fiduciaries navigating their duties under ERISA, said the specter of litigation is prevalent.

“These companies are trying to do the right thing and give benefits to their employees, but they’re just kind of waiting for their number to be up at this point,” she said. “You think there can’t be any more cases filed but they just keep coming and coming.”

To contact the reporter on this story: Jacklyn Wille in Washington at [jwille@bloombergindustry.com](mailto:jwille@bloombergindustry.com)

To contact the editors responsible for this story: Carmen Castro-Pagán at [ccastro-pagan@bloomberglaw.com](mailto:ccastro-pagan@bloomberglaw.com); Alicia Cohn at [acohn@bloombergindustry.com](mailto:acohn@bloombergindustry.com)