

401(k) Plan Fiduciaries Who Failed to Deposit Participant Contributions Must Repay Plan Within 60 Days

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Micone v. iProcess Online, Inc., 2025 WL 1158885 (D. Md. 2025)

Following an investigation into mishandling of 401(k) plan funds, the DOL sued the employer (which was the plan sponsor and ERISA plan administrator) and one of its officers for breaching their ERISA fiduciary duties. According to the DOL, the fiduciaries failed to remit participant contributions to the plan, instead allowing the funds to be comingled with the employer's general assets. As a reminder, participant contributions become ERISA plan assets—and must be deposited in trust—as soon as they can “reasonably be segregated” from the employer's general assets. The DOL also asserted that the fiduciaries failed to ensure that all employer matching contributions were forwarded to the plan and also failed to process participant distribution requests. Documentation supporting the DOL's findings included employee pay stubs showing amounts withheld for participant contributions and plan account statements reflecting that over \$175,000 in contributions had been withheld but not remitted to three employees' individual accounts. Transaction records showed that for more than seven years, participant contributions were withheld but not paid to the plan.

The fiduciaries did not present any arguments or otherwise respond to the DOL's claims, so the court exercised its discretion to rule in favor of the DOL. (The court noted that, separately, the officer was convicted of embezzlement and the participants were awarded damages—as yet unpaid—in their own lawsuits against the fiduciaries.) Based on the documentation presented, and taking into account prejudgment interest and amounts awarded under separate proceedings, the court required the fiduciaries to pay the plan over \$100,000 within 60 days. The fiduciaries were held jointly and severally liable, which means that each party may be responsible for the entire amount, and were removed and permanently prohibited from serving as ERISA fiduciaries. The court also appointed an independent fiduciary to terminate the plan and distribute its assets, with the independent fiduciary's fees to be paid by the former fiduciaries.

EBIA Comment: Personal liability for losses to the plan is a significant potential consequence of breaching one's fiduciary duty under ERISA. Of course, conscientious fiduciaries will do their best to administer the plan properly—certainly without misusing participant funds. But this case is a reminder that the DOL will exercise its investigative powers to the fullest extent possible. For more information, see EBIA's 401(k) Plans manual at Sections VIII.I (“Deposit Deadline for Participant Contributions”) and XXIV.O (“Consequences of Breach of Fiduciary Duty”). See also EBIA's ERISA Compliance manual at Section XXVIII.I (“Fiduciary Liability and Litigation”).

Contributing Editors: EBIA Staff.