In Latest Salvo, Lawsuit Seeks to Overturn Fiduciary Rule, *SHRM, ft. Brendan McGarry*

Brendan P. McGarry of Kaufman Dolowich & Voluck in Chicago was quoted in an article written by Stephen Miller on June 3, 2016 for SHRM regarding a recent Department of Labor Fiduciary rule lawsuit.

He commented on a regulation intended to protect retirement plan participants from receiving conflicted investment advice which is under assault from financial services firms and trade groups that view the rule as a draconian compliance burden.

In the latest battle against the U.S. Department of Labor's (DOL's) final rule on conflicts of interest in retirement advice issued in April, business groups on June 1 filed a lawsuit in federal district court seeking to have the regulation struck down, claiming that the DOL exceeded its regulatory authority granted by Congress.

"The lawsuit makes some compelling arguments, and points out many of the issues with the rule that those subject to it have been speaking about since its proposal," said Brendan McGarry, an attorney at Kaufman Dolowich & Voluck in Chicago. In addition to alleging that the DOL lacks the authority to enact the rule, he noted, the suit claims that the rule violates the Administrative Procedures Act and that:

• The Securities and Exchange Commission (SEC) should be the agency to police investment advisors.

• The rule will be too costly for those subject to its requirements.

• The DOL rushed through the rule evaluation and approval process without addressing many of these issues raised by affected parties.

The lawsuit also "alleges a novel theory of recovery" involving the rule's best interest contract (BIC) exemption, McGarry said, by making a First Amendment argument that the BIC exemption improperly abridges financial advisors' right to engage in truthful, non-misleading speech related to their products and services by prohibiting it outside of a fiduciary relationship.