



Dechert's Office in Manhattan, New York. Photo: Ryland West/ALM

NEWS

Ex-Dechert Lawyer Sued In Overpayment Tiff Contends Firm Improperly Tapped Her Retirement Account

Former senior project attorney Kathleen Fay asked a New York state court to dismiss the firm's suit, alleging it violated state and federal law by removing \$41,000 from her 401(K) account.

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Litigation



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Business of Law Reporter

What You Need to Know

- Dechert sued Kathleen Fay in September trying to recoup more than \$90,000 the firm says was issued to her in error.
- Fay is now seeking dismissal of the suit, arguing that Dechert's claims fail for a number of reasons.
- In seeking dismissal, Fay also alleges that Dechert engaged in 'self-help recovery' by taking vested funds from her retirement account without consent.

A former Dechert attorney who is currently being sued by the firm in New York state court for failing to return more than \$90,000 that it claims was paid in error filed a motion Thursday seeking to dismiss the litigation, alleging that by removing over \$41,000 from her retirement account as a way to recoup the money, the firm violated state and federal law.

Dechert filed suit against former senior project attorney Kathleen Fay in January, contending that she refused to comply with a request to return

compensation delivered for work that the attorney never performed for the firm.

Fay responded in her motion to dismiss by saying that Dechert “blames and punishes [her] for its Unilateral ‘Error’” and also highlighting the firm's efforts to claw back the money.

“Dechert’s ‘self-help’ recovery entailed taking vested funds from Ms. Fay’s retirement account without her knowledge or consent,” the motion to dismiss reads. “Specifically, Dechert, without prior warning or notice to Ms. Fay, ‘instructed Fidelity to reverse the contributions made in 2024’ to her 401(K) account.

Amy E. Robinson, a partner with Giskin Solotaroff & Anderson who represents Fay, said in an email that given the circumstances involving Dechert’s allegedly violating state, and possibly, federal law in its methods to try to recover the wage overpayment, “allowing the case to proceed would be a manifest injustice.”

In the motion to dismiss, Fay argues that even after engaging in “self-help,” Dechert claims that more than \$90,000 is still owed to the firm.

Dechert hired Fay in the summer of 2018 as a senior project attorney and claims that the attorney, who was let go in 2023, subsequently received \$132,250 in compensation for legal work that she never actually performed for the firm. The firm has classified the overpayments as an administrative error.

In her motion to dismiss, Fay argues that Dechert’s claims, which include unjust enrichment and conversion, fail because the firm’s attempts to recover Fay’s wages are in violation of both the New York Labor Law and the federal Employee Retirement Income Security Act.

“Dechert’s taking of earned wages from Ms. Fay is in blatant violation of the New York Labor Law’s statutory and regulatory procedures and therefore it is unlawful,” the motion reads. “Dechert ignores the NYLL in its complaint and seeks to make an end-run around its requirements by

asserting the equitable claims in this case. This unlawful conduct bars Dechert's claims."

The motion also alleges that Dechert never offered an explanation into the apparent administrative error that it had cited as the reason for the overpayments to Fay.

"Given Plaintiff's threadbare allegations concerning its purported 'error,' the only reasonable inference is that Dechert has simply mismanaged its business and now regrets its mismanagement," the motion states.

Additionally, Fay claims that Dechert's deduction from Fay's vested funds from her retirement account was a "blatant" violation of the ERISA, which prohibits the forfeiture of an employee's own contributions.

"Dechert seeks the return of a purported wage overpayment that it is not entitled to recover under the NYLL, and, further, Dechert has unlawfully taken back vested contributions from the retirement account of a 56-year-old former employee to recover part of the overpayment," the motion states. "In this situation, equity and good conscience do not require the return of any funds."

Dechert did not immediately respond to a request for comment by press deadline.

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