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in focus

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The Ins and Outs of Fiduciary Responsibility

Do you know who your plan fiduciaries are? Do they know what their responsibilities are under ERISA?

Every employee benefit plan governed by ERISA is required to have a fiduciary, and this fiduciary must be named in the plan's written document.

A plan may have more than one fiduciary, or name different fiduciaries for different purposes – for example, a named investment fiduciary and a named administrative fiduciary.

A plan fiduciary may be an individual or a committee. Individuals who are named as fiduciaries or who members of the fiduciary committee may be designated by name or based on position.

Who Is a Fiduciary?

A fiduciary is any person who has discretionary authority over the administration or management of a plan or who exercises any control over the plan's assets. Thus, any person who has discretion over the administration of an ERISA plan, even if he is not specifically named or appointed as a fiduciary, is an ERISA fiduciary.

It is therefore important to ensure that only persons who are intended to be fiduciaries of the plan have any authority or control over the management of the plan or the plan's assets.

Certain persons are not permitted to serve as plan fiduciaries, including persons who have been convicted of certain specified crimes (including, but not limited to, robbery, fraud, or perjury) or who have violated certain laws (including, but not limited to, ERISA or Section 302 of the LMRA). Such persons should not be named as fiduciaries and should not be permitted to have any discretion with respect to the administration of the plan or control over plan assets.

What Are a Fiduciary's Responsibilities?

ERISA is specific when it comes to the responsibilities of a plan fiduciary, and failure to satisfy these obligations can result in onerous consequences for the fiduciary.

ERISA requires plan fiduciaries to:

- act in the best interests of plan participants and beneficiaries;

- defray reasonable plan expenses;
- be prudent, careful and diligent in the execution of their duties;
- diversify the investment of plan assets in a manner that minimizes the risk of large losses; and
- comply with the terms of the plan documents (except if doing so would violate any the foregoing fiduciary obligations).

Whether a fiduciary has satisfied these obligations is determined based on whether a prudent person would have taken the same actions under the same circumstances.

What Happens to Fiduciaries Who Breach Their Responsibilities?

A fiduciary who breaches his duties is personally liable for any loss to a plan caused by the breach. Thus, for example, if a plan committee is a named fiduciary that is found to have breached its duties to an ERISA plan, the plan can recover its assets from the personal assets of each committee member.

How Can Fiduciaries Avoid Breaching Their Responsibilities?

There are actions plan sponsors and fiduciaries can take to ensure that the plan and the plan fiduciaries satisfy ERISA requirements. First and foremost, the plan documents should specify who is the named fiduciary of the plan. The plan should also set forth procedures for allocating fiduciary responsibilities to fiduciaries other than the named fiduciary. If the proper procedures are followed, the named fiduciary will not be liable for the acts of its appointees/delegates.

Plan fiduciaries should understand precisely what their obligations are to the plan and what risks can arise if they fail to meet their obligations. Anyone who is not intended to be a fiduciary should not have any discretion to make decisions relating to plan administration and should not have any authority or control over plan assets. This avoids the risk that persons who were not intended to be fiduciaries inadvertently breach an obligation they did not know they had.

Fiduciaries should also utilize experts (*e.g.*, investment advisors, actuaries) to the extent it would be prudent to do so.

Finally, fiduciaries should document their decisions and the processes employed to determine that the decisions are in the best interest of the plan participants.

Committee as Named Fiduciary

Many plans name a committee to serve as the named fiduciary. This committee should be comprised of individuals who have different areas of expertise (*e.g.*, human resources, finance, tax, etc.) and should meet periodically (*e.g.*, quarterly).

reviewing claims appeals, communicating with participants, performing plan audits, and reviewing service provider performance.

For more information about fiduciary responsibilities under ERISA, please contact:

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