the
401k Service
SOLUTION™

WHAT YOU NEED TO KNOW ABOUT FIDUCIARY RESPONSIBILITY

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INTRODUCTION

What does it mean to be a fiduciary? What responsibilities are involved and what kind of liability do fiduciaries have?

As a fiduciary, it is necessary that you understand your role, responsibilities, and obligations. Without this knowledge, you will not only be ill-equipped to properly perform your job, but you may be putting yourself at risk for legal action.

This paper will present an explanation of who a fiduciary is and what their position entails. It will touch on personal liability and the core responsibilities that are fundamental in satisfying the highest standard of care.

ARE YOU A FIDUCIARY?

According to ERISA, a fiduciary is anyone who:

- Exercises any discretionary authority over the management of the plan or the management or disposition of plan assets.
- Provides or has the responsibility or authority to provide investment advice for a direct or indirect fee or other compensation.
- Has discretionary authority or discretionary responsibility related to the administration of the plan.

Certain positions are always considered fiduciaries, such as the plan sponsor and the plan trustees. Additional fiduciaries may be specifically listed in the plan document by name or title. However, ERISA's definition of a fiduciary is a functional one, so anyone who acts in a fiduciary role is a fiduciary. This means, for example, that whoever selects investments for the plan is a fiduciary, whether or not they are formally assigned that responsibility.

If a plan has a committee to oversea the plan administration and the investments, then the committee members, as well as the board of directors who appoint them, are fiduciaries under the law. In the absence of a committee, company officers who make decisions about the plan are fiduciaries.

A person who performs certain ministerial administrative functions within a framework of the plan's policies, practices, and procedures, are most likely not considered a fiduciary under ERISA if they cannot "act with discretion."

WHAT YOU NEED TO KNOW
The Core Responsibilities

As a plan fiduciary, you are held to a higher ethical standard of care then non-fiduciaries. In ensuring that the plan provides the participants and beneficiaries with the benefits due them and in defraying reasonable plan expenses, a plan fiduciary must comply with four core responsibilities. They are:

1. Prudence: Act with care, prudence, and diligence in all matters of plan management.

2. Diversify Investments: Diversify the investment options of the plan so as to reduce the risk of large losses.

3. Loyalty: Act solely in the best interests of the plan participants and beneficiaries.

4. Adhere to the Plan: Act in accordance with the documents and instruments governing the plan. This includes the Investment Policy Statement (IPS).

By following these four core responsibilities, you will not only perform your duties with the utmost care and proficiency, but will increase your protection from liability. That being said, you can never **fully** insulate yourself from litigation.

Personal Liability

As a fiduciary, you are personally liable for any claims against the mismanagement of the plan or plan assets. In other words, your personal assets could become the target of litigation regardless if you have hired a third-party administrator, consultant or service provider. Additionally, you must be aware of any co-fiduciaries serving the same plan. You can be held liable for any breach of duty a co-fiduciary makes that you either participated in, attempted to conceal, or did not strive to correct.

To protect yourself from personal liability, you can purchase Fiduciary Liability Insurance. This is not to be confused with an ERISA Fidelity Bond , which protects the plan **not the individual** from losses of an Insured Plan resulting directly from dishonest or fraudulent acts committed by a named fiduciary.

Fiduciary Liability insurance is custom-made to safeguard your personal assets. It covers fiduciaries from claims of breaches in fiduciary duties, standards of care, and allegations of wrongful acts. Though it is not required, it is recommended as an important component of a fiduciary risk management policy.

Your Fiduciary Duties

As a Fiduciary, you are providing a critical service to your plan participants and beneficiaries by making prudent, sound decisions on their behalf. In order to successfully navigate through the investment climate, you may need to hire experts to guide you. However, you should prudently select and monitor any plan providers, investment managers or consultants you employ, as you will be held accountable for their actions.

In addition, it is a fiduciary's responsibility to ensure the reasonableness of all fees when choosing a service provider and plan investments. You need to educate yourself on which fees are included in bundled service arrangements, what the additional "hidden" fees are, and which pool the fees are being paid from. To provide transparency, the IPS should clearly state how all fees should be paid.

It is crucial that as a fiduciary, you prevent conflicts of interest and prohibited transactions. You must be vigilant in order to minimize any exposure to impropriety. One vital component to decreasing any questionable behavior is the documentation of all actions, which should always be distributed as necessary and archived to demonstrate ERISA compliance and full disclosure.

FINAL THOUGHTS

The role of a fiduciary is one of great trust and obligation. In order to successfully fulfill your role, you must be clear on all of your responsibilities, not just to your plan participants, but your legal responsibilities to ERISA as well. Fully grasping the nuances of your position is the first step to a successful fiduciary relationship.

The core responsibilities of acting with prudence in all matters, diversifying investments, maintaining loyalty to your plan participants, and following the plan documents including the IPS, should continuously impact all your decisions.

Identifying and resolving fiduciary shortfalls is typically accomplished with proven processes that don't require business distractions, just specialized expertise.

Contact us for a no-obligation consultation.