

Fiduciary Responsibility

**You have responsibilities as a Fiduciary
for your company retirement plan...**

Are you complying?

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Are you a fiduciary for your company's retirement plan? Don't know? Now is the time to find out and start understanding exactly what your responsibilities are and make sure you are complying with these responsibilities.

Who is a Fiduciary?

The Employee Retirement Income Security Act (ERISA) protects a plan's assets by requiring that those persons or entities who:

- Exercise discretionary control; or
- Have authority over plan management or plan assets; or
- Have discretionary authority or responsibility for the administration of a plan; or
- Provide investment advice to a plan for compensation, or have any authority or responsibility to do so,

are subject to fiduciary responsibilities. Plan fiduciaries typically include:

- The sponsoring employer
- Employer's board of directors
- Officers of the employer who are responsible for plan decisions
- Members of a plan's investment committee (if it has such a committee)
- Anyone with discretionary control or authority over the plan management
- Anyone responsible for administration of the plan



- Anyone who provides investment advice to the plan for compensation

What responsibilities does a Fiduciary have?

Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants and their beneficiaries in a retirement plan.

These responsibilities include:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
- Carrying out their duties prudently;
- Following the plan documents (unless inconsistent with ERISA);
- Diversifying plan investments; and
- Paying only reasonable plan expenses

The duty to act prudently is one of a fiduciary's central responsibilities under ERISA. It requires expertise in a variety of areas, such as investments. If lacking that expertise, a fiduciary should hire someone with the professional knowledge necessary to administer the

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program and provide investment alternatives. Prudence focuses on the process for making fiduciary decisions. Therefore, it is wise to document decisions and the basis for those decisions. For instance, in hiring any plan service provider, a fiduciary may want to survey a number of potential providers, asking for the same information and providing the same requirements. By doing so, a fiduciary can document the process and make a meaningful comparison and selection. A good financial advisor should facilitate this process for you.

Fiduciaries that do not follow the basic standards of conduct may be personally liable to restore any losses to the plan, or to restore any profits made through improper use of the plan's assets resulting from their actions.

Basic Standards

1. Keep a due diligence file for fiduciary decisions.

Fiduciary decisions need to be documented. These include, but are not limited to, fund review and monitoring, committee minutes, and annual plan reviews. Your Wealth Advisor may be able to set up a custom website for you to document these decisions.

2. Create an Investment Policy Statement (IPS).

The IPS establishes the objectives of the plan's investments. It clearly defines how the investment options in your plan are selected and monitored, and how their performance is evaluated. Your Advisor should help you prepare a document that provides the performance measures and guidelines.

3. Compare and Select Investment Providers (also known as Plan Providers).

Investment providers offer a wide range of investments and services. Compare the quality of those offerings, as well as their cost. A variety of factors can affect the price of a particular plan, such as participant communications and education, and website access. Again, your financial Advisor can and should help facilitate this process.

4. ERISA Bond.

As an additional protection for plans, those who handle plan funds or other plan property must be covered by a fidelity bond. A fidelity bond is a type of insurance that protects the plan participants against loss resulting from the fraudulent or dishonest acts of those covered by the bond. By law this bond must be written in an amount equal to 10% of the assets in the plan or \$500,000, whichever is more.

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Program: 8:30 am - 10:30 am

Workers Compensation 101

Friday, September 9, 2011

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5. Monitor and Review Investments and Investment Providers.

Once you've selected the investment provider it's imperative to set up periodic monitoring. Together with your Advisors, you should examine all aspects of plan operations and investments to see how well they are meeting the needs of the participants. It is also important to measure your funds performance vs. other funds in each respective category to make sure you are providing your participants with the best available fund choices.

To get fiduciary protection offered by 404(c)(1)(A), a plan must offer a broad or diverse range of investment alternatives. Participants must have the opportunity to:

- Materially affect the potential return and degree of risk on their portfolio
- Choose from at least three core investment alternatives
- Diversify the investments to minimize the risk of large losses, taking into account the nature of the plan and the size of accounts

Summary of Tips for Employers with Retirement Plans

Understanding fiduciary responsibilities is important for the security of a retirement plan and compliance with the law. The following tips may be a helpful starting point:

- Have you identified your plan fiduciaries, and are they clear about the extent of their fiduciary responsibilities?
- If participants make their own investment decisions, have you provided sufficient information for them to exercise control in making those decisions?
- Are you aware of the schedule to deposit participants' contributions in the plan, and have you made sure it complies with the law?
- If you are hiring third-party service providers, have you looked at a number of providers, given each potential provider the same information, and considered whether the fees are reasonable for the services provided?
- Have you documented the hiring process?
- Are you prepared to monitor your plan's service providers?
- Have you identified parties in interest to the plan and taken steps to monitor transactions with them?
- Are you aware of the major exemptions under ERISA that permit transactions with parties-in-interest, especially those key for plan operations (such as hiring service providers and making plan loans to participants)?
- Have you reviewed your plan document in light of current plan operations and made necessary updates? After amending the plan, have you provided participants with an updated SPD or SMM?
- Do those individuals handling plan funds or other plan property have a fidelity bond?✂

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6. Communicate with Participants.

Summary Plan Description – The SPD is a key document to help you obtain 404(c)(1)(A) protection and is usually prepared by your third party administrator. The SPD should be given to your employees shortly after they begin participating and it should be updated periodically.

If the plan wants to protect its fiduciaries under ERISA 404(c)(1)(A), an explanation must be provided that the plan intends to comply with ERISA(c)(1)(A) and that such compliance may relieve the fiduciaries of liability for investment decisions made by plan participants. This notice also needs to include the name, address and

phone number of the plan fiduciary from who the participants can obtain investment information.

7. Other information that should be given to participants in writing includes:

- Description of the plan's investment alternatives and their investment objectives and risk and return characteristics – usually this is in the enrollment material for a plan.
- Explanation of when and how participants can give investment instructions, including any limitation on trading restrictions or short term holding periods.
- Description of any transaction fees and expenses in connection with making or changing investments in a participant's accounts.

Your participants also have the right to request additional information and it is your responsibility to let them know about what information they can request, such as: annual operating expense of the plans investment options, copies of material provided to your regarding the investments in the plan, list of holdings in the portfolio of each investment option, and information concerning the value of the investment options in their accounts. At a minimum, one annual educational meeting should be held for all participants.

8. Conduct Annual Plan Review

Once a plan is established it needs to be monitored, from fees and services, to how well investments are performing and how well the overall plan matches the needs of your company and your participants.

Conclusion

Fiduciary duties are numerous and complex. Fortunately, fiduciaries can seek guidance from competent advisors who have experience with these complex rules. Procedures should be in place for evaluating and monitoring these service providers on an ongoing basis. Prudent management of your fiduciary obligations will help you avoid putting your personal assets at risk.✂

Jason Labrum is founder and managing principal of Labrum Capital Advisors, LLC and manages and advises qualified retirement plans helping protect plan fiduciaries from personal and corporate financial liability, while enhancing investment opportunities for participants and guiding them towards financial security.

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Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Transform Your Summer Cookout

Warm weather means outdoor get-togethers and cookouts, but it can be tough to eat nutritiously surrounded by hot dogs, potato salad and pie. Use these tips to incorporate health and safety into your summer parties.

Safety First

- With all-day events, it can be easy to neglect simple hygienic food practices.
- Never let food sit out for more than two hours (one if over 90 degrees F outside). Set a timer to remind you.
- Always wash your hands and all dishes used for food preparation.
- Preheat the grill at least 20 minutes in advance to get rid of bacteria from your last barbeque.
- Keep mayonnaise-based foods and fresh fruit cool – put some ice in a second bowl underneath.

Enjoy Your Favorites

Watching what you eat doesn't mean you have to sacrifice your favorite cookout menu. Try these tips to add nutrition to traditional summer foods.

- Choose turkey or veggie burgers and turkey dogs with a whole wheat bun to enjoy these classics without ruining your diet. Top with ketchup, mustard, lettuce and tomato – skip the mayo and cheese. Make potato salad healthier by leaving the potato skins on and substituting nonfat yogurt for half the mayo. This swap also works for coleslaw.
- Replace potato chips with pretzels or a fruit and veggie platter.
- Experiment with new grill items, such as lamb and veggie kabobs, fish, chicken breast, and various vegetables and fruits.

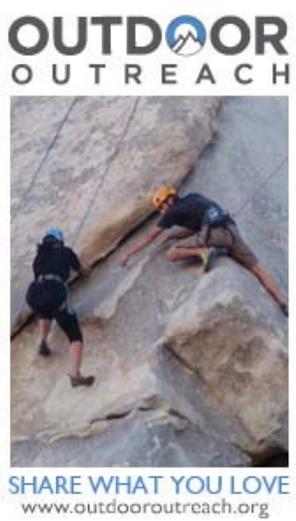
- Keep dessert sweet but add nutrition by serving a fruit salad. Or freeze 100 percent fruit juice to make frozen juice pops.
- Offer a cooler of water and sliced lemons for a refreshing, calorie-free drink option.
- Don't forget to plan fun activities to get the group moving, such as ring toss, kickball or playing catch. ✂



'Tis the Season...To Get Active!

You know that regular physical activity is important for you (and your family's) health, but it can be difficult to get motivated. Take advantage of the summer weather and find fun, affordable ways to get active while enjoying the outdoors.

- Find a park or trail near you and explore. Take the whole family for a scenic hike or bike ride. Or, take a walk or ride around the neighborhood.
- When possible, get in the habit of walking or biking to nearby places such as stores, parks or restaurants.
- Cool off on a hot day and hit the local pool or beach. Not only is swimming fun and low-impact, it's also great for your cardiovascular health, strength and flexibility. This activity is ideal for people of all ages, as well as those with a disability or recovering from an injury.
- Join a local softball, volleyball or other sports league – and encourage family members and kids to do the same.
- Take your kids to a local playground and join in their fun. ✂



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