



PLAN SPONSOR

Am I a Fiduciary?

Offering a retirement plan can be one of the most challenging, yet rewarding, decisions an employer can make. The employees participating in the plan, their beneficiaries and the employer all benefit when a retirement plan is in place. Administering a plan and managing its assets, however, require certain actions and involve specific responsibilities. Knowing whether or not you are a fiduciary (someone who manages an employee benefit plan and its assets) is imperative because you could be held personally liable for your acts associated with administering the plan—whether your acts or decisions were made knowingly or unknowingly in violation of your fiduciary duties. Not knowing your responsibilities is not a defense.

To meet their responsibilities as plan sponsors, employers need to understand some basic rules, specifically the Employee Retirement Income Security Act of 1974 (ERISA). ERISA sets standards of conduct for fiduciaries.

What are the Essential Elements of a Plan?

Each plan has certain key elements. These include:

- A written plan that describes the benefit structure and guides day-to-day operations
- A trust fund to hold the plan's assets
- A recordkeeping system to track the flow of monies going to and from the retirement plan
- Documents to provide plan information to employees participating in the plan and to the government

Employers often hire outside professionals (sometimes called third-party service providers) or, if applicable, use an internal administrative committee or human resources department to manage some or all of a plan's day-to-day operations. Indeed, there may be one or a number of officials with discretion over the plan. These are the plan's fiduciaries.

Who is a Fiduciary?

Many of the actions involved in operating a plan make the person or entity performing them a fiduciary. Using discretion in administering and managing a plan or controlling the plan's assets makes that person a fiduciary to the extent of that discretion or control. Thus, fiduciary status is based on the functions performed for the plan, not just a person's title.

A plan must have at least one fiduciary (a person or entity) named in the written plan, or through a process described in the plan, as having control over the plan's operation. The named fiduciary can be identified by office or by name. For some plans, it may be an administrative committee or a company's board of directors.

A plan's fiduciaries will ordinarily include the trustee, investment advisers, all individuals exercising discretion in the administration of the plan, all members of a plan's administrative committee (if it has such a committee) and those who select committee officials. Attorneys, accountants and actuaries generally are not fiduciaries when acting solely in their professional capacities. The key to determining whether an individual or an entity is a fiduciary is whether they are exercising discretion or control over the plan.

A number of decisions are not fiduciary actions but rather are business decisions made by the employer. For example, the decisions to establish a plan, to determine the benefit package, to include certain features in a plan, to amend a plan and to terminate a plan are business decisions not governed by ERISA. When making these decisions, an employer is acting on behalf of its business, not the plan, and, therefore, is not a fiduciary. However, when an employer (or someone hired by the employer) takes steps to implement these decisions, that person is acting on behalf of the plan and, in carrying out these actions, may be a fiduciary.

What is the Significance of Being a Fiduciary?

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

Knowing your fiduciary responsibilities is serious business. A fiduciary who does 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. Courts have found fiduciaries personally liable for acts that they did not know were within their fiduciary responsibilities. It is your duty to know whether you are a fiduciary, and, if so, what your responsibilities are. Acting in good faith or with good intentions is not a defense.

Adapted in part from the Department of Labor's "Meeting Your Fiduciary Responsibilities."