

Understanding What It Means To Be a Plan Fiduciary

Many activities involved in operating a qualified retirement plan may make the person or entity performing those activities a plan fiduciary. As a plan sponsor, it's important for you and other fiduciaries of your plan to fully understand your responsibilities and the consequences of not fulfilling them.

Who is a fiduciary? With limited exceptions, under ERISA, a fiduciary is anyone who: exercises any discretionary authority or discretionary control over the management of the plan; exercises any authority or control with respect to management or disposition of the plan's assets; has any discretionary authority or discretionary responsibility over the administration of the plan; gives investment advice to the plan for a fee or other direct or indirect compensation or has the authority or responsibility to do so. Thus, fiduciaries may include, but aren't limited to, the plan's trustee, investment manager, administrator, administrative committee, and the plan sponsor.

What are a fiduciary's duties? A plan fiduciary must follow the plan documents (unless they're inconsistent with ERISA) and act solely in the interests of the plan participants and their beneficiaries and for the exclusive purpose of providing benefits to them. In addition, a plan fiduciary must act with the care, skill, prudence, and diligence that a prudent person would exercise under similar circumstances. Fiduciaries must also make sure the plan's investments are diversified (unless it's clearly prudent not to do so under the circumstances) and pay only reasonable plan expenses.

Does the pension law prohibit any specific actions? Yes, ERISA prohibits certain types of transactions between the plan and specified related parties (called "parties in interest"). As employer/plan sponsor/fiduciary, you are considered a party in interest to the plan. Other parties in interest include employees of the plan, any other fiduciaries (such as the plan's administrator, officer, trustee, or custodian) the plan's counsel, plan service providers, a direct or indirect owner of 50% or more of the sponsoring company, and relatives (as defined under ERISA) of 50%-plus owners.

What transactions are prohibited? Examples of prohibited transactions between the plan and a party in interest include selling, exchanging, or leasing property; lending money or extending credit; and furnishing goods, services, or facilities. The law contains exceptions that protect the plan in conducting necessary transactions that would otherwise be prohibited and for many dealings with financial institutions that are essential for the plan's ongoing operations. For example, a plan can hire a service provider, as long as the services are necessary to operate the plan and the contract or arrangement with the provider and the compensation paid for the services are reasonable. And plans may offer loans to participants as long as certain requirements are met.

Are there any other prohibitions? Fiduciaries also are prohibited from self-dealing. Various restrictions prevent a fiduciary from deriving personal gain from actions that involve the plan. Because of the complexity of the prohibited transaction rules, you should consult your plan's ERISA attorney for advice before engaging in transactions involving plan assets.

What happens if a plan sponsor breaches its fiduciary duty? Fiduciaries that breach their responsibilities may be personally liable to restore the plan to the condition it was in prior to the breach, including restoring any monetary losses and returning any profits made through the use of plan assets. A fiduciary also may be subject to excise taxes for violating the prohibited transaction rules.