Managing Risk: Do's and Don'ts for Your Company's Retirement Plan Committee

Scan the business news and you will likely find an article detailing the latest 401(k) litigation against a company accused of a fiduciary breach. The litigious trend started with corporate behemoths but has been trickling down to small and mid-size plans.

Adding to this, a survey found that 43% of company fiduciaries don't actually think they are fiduciaries.[1]

Clearly, it is increasingly important for companies to understand their fiduciary responsibility and legal obligations. As a retirement plan sponsor, you are still responsible for adhering to the Department of Labor's Employee Retirement Income Security Act of 1974 (ERISA) guidelines, which govern and enforce the administration of 401(k) plans and their assets.

Here are five ways that plan sponsors can aim to lower fiduciary risk and stay in accordance with ERISA. If you have questions about the complexities of plan management, contact us for support.

1. **Plan Committee, IPS and Governing Documents**

   Establishing a plan committee is the first step in guiding the fiduciary oversight process. The committee should be a reasonable size and include experienced members of finance, HR and operations. In turn, members will be responsible for numerous aspects of plan management, often in conjunction with your retirement plan advisor.

   Next, the investment policy statement (IPS) is a roadmap for investment oversight because it determines the prudent processes and criteria for selecting and monitoring plan investments. When the plan committee meets, it uses the IPS to benchmark and review funds, fees and whether the investment strategy is meeting its stated goals and objectives, among other things.

   Additional governing documents include the plan document, trust statement and charter statements that should be read, reviewed, understood and followed by all committee members.

   We can work with you to educate you and your committee members as well as provide guidance and resources to manage your governing documents. Our managed portfolios are designed to mirror the requirements in your IPS to ensure that your plan's investments are appropriately monitored and, if changes need to be made, we execute them on your behalf.

"Let's be clear about fiduciary status." J.P. Morgan. 10 Oct 2017. https://am.jpmorgan.com/us/institutional/library/lets-be-clear-about-fiduciary-status

2. **Document the Investment Process**

   Documentation of process is critical in establishing fiduciary compliance. This includes recording minutes every time plan fiduciaries or investment committees meet to discuss investment changes or decisions. The documentation must show that due diligence has been taken in advance of a decision.

   We work closely with a third-party investment manager, Buckingham Strategic Partners, who will conduct due diligence and make available low-cost, 12b-1-free, commission-free and load-free funds for the plan. By outsourcing fund monitoring and selection, you can spend your time growing your business rather than monitoring the plan's investments yourself.

3. **Conduct Oversight Meetings**

   Investment committees should have regularly scheduled meetings (either annually, biannually or quarterly, depending on the size of the plan) to monitor performance, evaluate service provider agreements, and ensure that costs and fees remain reasonable.

   Be careful of the tempting "set-it-and-forget-it" mindset that leads to infrequent monitoring and lack of process, which can result in a failure of fiduciary duties.

   We work with all our clients on scheduling and conducting these meetings for your team, and will provide resources such as education, plan committee charter templates and fiduciary checklists to make sure you are meeting your fiduciary duties.

4. **Fund Choices**

   Offering numerous funds (i.e., "a fund for everyone") does not reduce fiduciary risk. Rather, plan sponsors should conduct prudent due diligence to ensure that fund selection aligns with the IPS and corresponding investment strategies are appropriate.

   The investment choices should not favor a particular asset class over another nor be overtly correlated to each other; however, the fund menu should provide a spectrum of risk and reward.

   Underperforming funds should be monitored closely and replaced if necessary. Simply adding funds to counteract low performers increases fiduciary risk and can be interpreted as not fulfilling ERISA responsibilities.

   Plan sponsors are wary of having the responsibility to make these changes themselves. Our fiduciary investment manager assumes the responsibility of adding and removing funds in the plan over time, taking on the risk and responsibility for maintaining the fund lineup for the plan.

5. **Fee Transparency and Reasonableness**

   Each year, plan sponsors are provided with a disclosure and information detailing their retirement plan's fees.

   Many advisors hide their fees in the investment products they use with their plans. Our fees, as well as any third-party investment management fees, are fully transparent. As a fiduciary, it is very important to us that our clients understand what they pay for our services.

   As a plan sponsor, it is your responsibility to verify the accuracy and reasonableness of all plan fees and document the benchmarking process.

While plan sponsors bear significant responsibility and oversight for the company's 401(k) plan, the burden can be eased by working closely with financial advisors and staying abreast of fiduciary obligations.

The result?

A win-win-win for the plan sponsor, advisor and participants!

We can obtain third-party benchmarks for you to document the costs of your plan. If you are a current client, reach out to us to receive fiduciary education and resources! If you are a prospective client, we can provide you a no-obligation review of your plan and make sure you have the resources you need to meet your fiduciary duties!

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This information was developed as a general guide to educate plan sponsors and is not intended as authoritative guidance or tax/legal advice. Each plan has unique requirements, and you should consult your attorney or tax advisor for guidance on your specific situation.