401(k) Plan Sponsors Can't Ignore Fiduciary Duty

Inattention may open the door to liability & severe penalties.

Presented by Benedict A. Mitchell Jr.

Do your employees have a company retirement plan? *If they do, then you have a fiduciary responsibility to them.*

Ignoring it to any degree could really cost you.

Maybe you've heard about some of the settlements linked to charges of negligence or mismanagement. They can be painful for businesses big and small.

In 2010, a Fortune 500 engineering firm based in California had to pay a settlement of $18.5 million as a result of a class-action case brought by just two employees who claimed that it was making insufficient effort to reduce the account fees in its 401(k) program. In 2012, the Department of Labor recovered more than $117,000 in unremitted employer contributions (and associated lost opportunity costs) for two employee benefit plans sponsored by a Wisconsin construction firm with 25 active plan participants; its owner was forced to cough up nearly $23,000 per a court judgment.[1,2]

These are not isolated examples. These are just two stories plucked from a seemingly unending news feed. So what does fulfilling your fiduciary responsibility mean?

More transparency. Because of new Department of Labor regulations, plan participants have to be issued a detailed breakdown of fees and expenses pertaining to their accounts. You must also disseminate investment instructions to them per updated Department of Labor regulations.

While every employer-sponsored retirement plan must have a named fiduciary, it is important to realize that fiduciaries are also determined by function. That is, while the plan document might not name John X. Person as a fiduciary, if John X. Person participates in the management or administration of the plan or hires a service provider, these are considered fiduciary functions by the DoL.[3]

The plan's investment processes must also be documented, so that you have clear evidence that things are operating according to stated procedure. In addition to a Summary Plan Description (SPD), an Investment Policy Statement (IPS) is also essential: it can define the plan's investment program and establish formal criteria for monitoring, comparing and evaluating performance results of various investment options over time. Input from a Registered Investment Advisor is critical here.[3]

Sufficient participant education. A retirement plan will be undervalued and underutilized without an effective employee education program. For legal reasons alone, your employees have to understand the investment options the plan presents and the fees and risks associated with each one. This can't be given short shrift and an investment professional should be called in to help explain the options as well as the potential role the plan can play in an employee's overall retirement savings effort.[3]

Compliance. Most administrators of workplace retirement plans are required to file a Form 5500 Annual Return/Report with the federal government – a disclosure made available to the U.S. Department of Labor, the Internal Revenue Service, the Pension Benefit Guaranty Corporation, and by extension the public.[3]

Plan providers need to be monitored, too. You don't want the wrong kinds of investments creeping into the plan and you want to watch for changes in the way a plan provider is compensated, changes in the fees affecting plan participants, and more.

This is just the tip of the iceberg. There is so much to watch over in the typical employer-sponsored retirement plan that little details can easily be missed – and they may lead to big headaches for your business.

Don't risk lawsuits or five- or six-figure settlements. Don't open the door to liability. Do the right thing, do the smart thing – turn to an experienced, professional third party that can play a fiduciary role for assistance.

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Citations.

1 - www.plansponsor.com/Bechtel_Settles_401%28k%29_Fee_Case_for_18_5_Million.aspx [10/14/10]
2 - www.dol.gov/ebsa/newsroom/2012/12-2319-CHI.html [12/5/12]
3 – www.irs.gov/publications/p560/ch04.html#en_US_publink10008978 [11/13/12]