

What Is ERISA?

In 1974, the United States government passed the Employee Retirement Income Security Act (ERISA), which dramatically increased the amount of liability that fiduciary employees face. Developed to protect those who participate in employer benefits, it also helped to define what exactly an employee benefits plan is, as well as the responsibility of fiduciaries and trustees. Anyone who exercises any kind of control over any kind of benefit plan is regarded as a fiduciary. Even members outside of a company can act as fiduciaries.

Who is considered a fiduciary under ERISA law?

A Fiduciary is any person who: Exercises any discretionary authority or discretionary control in managing the plan or who has any authority or control in managing or disposing of its assets; Renders investment advice for a fee or compensation with respect to any monies or other property belonging to the plan; or Has any discretionary authority or responsibility in administering the plan.

What are fiduciaries' requirements under ERISA?

Fiduciaries are required to perform their duties solely in the interest of the plan participants and their beneficiaries. Fiduciaries must exercise the care, skill, prudence, and the diligence of a prudent person who is acting in a like capacity and is familiar with such matters. This is commonly referred to as the "prudent expert" rule. ERISA requires that the fiduciary be an expert in his or her duties, not just a "prudent person".

Who Can File a Fiduciary Lawsuit?

- Employees who participate in benefit plans
- The Department of Labor
- The Pension Benefit Guarantee Corporation

What kind of fiduciary claims can be filed?

There are a number of different types of errors and fraudulent behaviors that can lead to a fiduciary liability insurance claim, including:

- Administrative error
- Failure to adequately fund a plan
- Wrongful termination of a plan
- Conflict of interest
- Failure to adequately fund a plan
- Denial or change of benefits
- Improper advice or counsel
- Fraud
- Theft and embezzlement

These scenarios are not intended to be interpreted as coverage positions. Coverage for any given claim is based upon its facts and the specific terms and conditions of the policy.

What Is Fiduciary Liability Insurance?

If a fiduciary or trustee within your company is accused of mishandling employee benefits, you may face a lawsuit. This type of insurance provides financial protection during such times. If a lawsuit goes to court, your company's assets as well as the personal assets of all accused fiduciary employees are on the line.

Fiduciary insurance will not only pay the legal costs to protect both assets, but can also provide reliable defense counsel. The most common form of fiduciary protection is a stand-alone fiduciary liability insurance policy. However, two other types of protection exist:

Fidelity bonds: This bond is made to compensate plan holders in the instance that a fiduciary member has been dishonest when working with employee benefits. Fidelity bonds are required by law if you offer employee benefits.

Employee benefit liability insurance: This policy will cover claims based on errors or omissions, like accidentally forgetting to enroll an employee into a benefits plan. It won't cover all situations, however, so consider purchasing fiduciary insurance that offers complete protection.

Who Needs Fiduciary Insurance?

If you have a small business with hourly employees who have no benefits options, you don't need fiduciary insurance. However, any organization offering benefits that can potentially be mismanaged, whether due to negligence or intent, is a good candidate for fiduciary liability insurance. Organizations that do not get this protection in place may be exposed to a host of issues, particularly with regard to retirement benefits. Normally, an employee benefit liability insurance policy will cover mistakes, but if your fiduciaries offer advice on retirement investment these activities fall into the area of professional liability. If you have an employed trustee who offers investment advice, that person may be responsible for choosing a management company for benefit plans and the funds that are offered. Those decisions can come under scrutiny in the event of a loss of retirement funds by an employee. Even an educational meeting can count as investment counsel.

It is important to note that whether or not your company is found at fault for a loss, the costs involved in your legal defense can be significant. With fiduciary insurance, however, these costs will be covered.

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