ERISA plan fiduciaries

How to avoid ERISA retirement plan liability

KERRI L. KELLER
Partner
Brouse McDowell

(330) 535-5711, ext. 257
kkeller@brouse.com

WEBSITE: Learn more about Brouse McDowell's attorneys and practice areas at www.brouse.com.

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Businesses and individuals managing employee retirement plans need to understand their Employee Retirement Income Security Act of 1974 (ERISA) obligations and the liabilities associated with plan mismanagement.

"Plan fiduciaries must act prudently. They must do things such as diversifying investments to minimize risk, and they must always act in accordance with plan documents, as long as those plan documents comply with ERISA," says Kerri L. Keller, a partner at Brouse McDowell.

"There are certain actions that plan fiduciaries must never do. These include using plan assets for personal gain or for business purposes," she says.

Smart Business spoke with Keller about the role of a plan fiduciary and how to comply with ERISA requirements.

Who is a plan fiduciary?

A plan fiduciary can be any business or individual who exercises discretion, control or authority with respect to plan management. It can also be any business or individual who manages plan assets or exercises discretion or control with respect to the disposition of plan assets. An ERISA fiduciary also can be those businesses or individuals who provide investment advice to a plan, or are responsible for plan administration.

Examples of plan fiduciaries are the named fiduciary or plan administrator, such as the employer or plan sponsor. But sometimes third-party service providers, investment managers and advisers, insurance brokers, and officers of the employer or plan sponsor can be deemed plan fiduciaries.

What are the responsibilities of a fiduciary?

Every plan fiduciary has a duty of loyalty, a duty of prudence, a duty to diversify and a duty to act in accordance with the plan documents. Plan fiduciaries should know that they could incur personal liability for breaching any of their ERISA-imposed responsibilities, obligations or duties.

This personal liability can require a plan fiduciary to pay back to the plan any losses that result from a breach of fiduciary duties, and to give back any profits that the fiduciary may have made from using plan assets. Fiduciaries must act solely in the interest of the plan participants, and for the exclusive purpose of providing plan benefits and defraying reasonable plan expenses.

Are all employer actions considered fiduciary actions?

No. Certain business actions are not considered fiduciary actions, such as the employer's decision to establish a plan, what features to include, and the decision to amend or terminate a plan. In other words, when an employer acts on behalf of its business, it is generally not acting in its capacity as a plan fiduciary.

However, actions taken to implement these decisions can transform a business or individual into a plan fiduciary. Fiduciary actions generally include exercising discretionary functions over the management of a plan and its assets.

What are the obligations and liabilities associated with plan mismanagement?

For starters, ERISA fiduciaries can be liable — even personally — for breaching any of the responsibilities, obligations or duties imposed by ERISA. If a fiduciary breaches a duty to the plan, he or she may be required to personally pay back any losses to the plan and restore any profits made by the use of plan assets. A court also can order any other relief that it deems appropriate.

What would be an example of a breach?

A breach would occur if a business owner used plan assets to finance a purchase of equipment to open a new division. The business — and the owner in his or her personal capacity — would likely be required to pay the plan back and disgorge any profits that were made by the improper use of the plan's assets. As previously stated, a plan fiduciary must act in the best interest of the plan and its participants — not in the best interest of the employer or owner.

The IRS, the Department of Labor, and the Department of Justice all have a role in ERISA oversight. These are the agencies that will generally perform compliance investigations and enforce penalties against the plan or plan fiduciaries. ●