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7 Fiduciary Duties 401k Plan Sponsors Overlook And What They Can Do To Address Them

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When a job becomes too familiar it's easy to start taking things for granted. In the case of 401k plan sponsors, it's not just familiarity, it's a belief that, if you put the right pieces in place, the plan runs itself.

That could be a dangerous misperception.

The buck almost always certainly stops at the plan sponsor's desk. As annoying as it may sound, the plan sponsor retains ultimate responsibility for the plan as a whole. The temptation is to begin to bypass dotting certain i's and crossing certain t's. Should this happen, the plan sponsor may soon regret it the next time the DOL comes knocking.

Here, in no particular order, are 7 fiduciary duties often overlooked by 401k plan sponsors.

#1: Putting Employees First

"Many 401k sponsors do not see the 401k plan as imperative to the welfare of their employees," says Dr. Guy Baker, CFP, founder of Wealth Teams Alliance in Irvine, California. "They may even regret implementing the plan. Employees, who understand the merits of saving for retirement, see the 401k as an integral part of the financial plan and welfare. Employers should implement auto-enrollment. This

means every new hire is in the plan automatically unless they opt out. The default investment option should not be the fixed account, but a target date fund based on age. Employers who implement auto increases are doing their participants a favor because this stimulates them to increase their savings."

#2: Investment Reviews

"Another thing plan sponsors overlook: Review and oversight of investment options they maintain for their employees," says Tolen Teigen, Chief Investment Officer of FinDec in Stockton, California. "You need to have a process of monitoring the investment options within the plan as well, whether that is doing it yourself, setting up an investment committee or hiring a 3(38) investment manager. You need a prudent process established and document the process on an ongoing basis."

"Annual testing of the plan and comparison of funds, choices, and expenses, especially in the smaller to mid-size companies," says Arvind Ven, CEO of Capital V Group in Cupertino, California. "The adviser on record or 3(38) fiduciary should be doing the testing annually. If not, then it could increase liability risk for plan sponsors in terms of employee concern whether the sponsors are fully discharging their fiduciary responsibilities."

#3: Employee Education

"In general, 401k plan sponsors overlook educating their plan participants on options that they have for contributions and types of accounts," says Michael Foguth, founder of Foguth Financial Group in Brighton, Michigan. "Plan sponsors also neglect to communicate properly with their plan participants."

#4: Conflict-of-Interest Prevention

"Recordkeeper use of participant data for cross-selling," says Eric Kristenson, Retirement Plan Consultant at Canby Financial Advisors in Framingham, Massachusetts. "This is so since there are an enormous amount of fiduciary issues that are talked about and this is one that gets little or no attention. The Plan Sponsor simply needs to request in writing what the recordkeeper can do with participant data. Can they cross-sell?"

#5: Revisiting Plan Design

"Many plan sponsors overlook the opportunity to use plan design features such as auto-enrollment or safe harbor that can drive both higher participation among employees and easier administration," says Diana Torzewski, Product Manager at Human Interest in San Francisco, California.

"Many plan sponsors also overlook the importance of plan design," says Nancy Cox, Partner and employee benefit plans expert for The Bonadio Group in Buffalo New York. "The plan audit threshold is determined by 'eligible' participants (as defined), not necessarily just those employees who are participating. So for a plan with low participation, the audit requirement could be eliminated by simply updating the plan's eligibility requirements. However, most companies are actually trying to increase plan participation, and so auto-enrollment has become popular. Auto-enrollment at a low rate can be detrimental to a participant's ability to retire. If auto-enrolled at 3%, a participant may just leave it alone, and 3% retirement savings is not enough. Good plan design would allow for a higher auto-enrollment rate (6% or more) that will automatically increase by 1% annually."

#6: Assuming Fiduciary Liability Can Be Fully Delegated

“Many 401k plan sponsors don’t always fully understand their fiduciary responsibilities,” says Cox. “Even if they have chosen an outside service provider to act as a fiduciary, that doesn’t completely absolve them of responsibility. The act of hiring someone to perform these duties is a fiduciary act, and service providers (along with their fees) still need to be monitored by the plan sponsor. This is very common as plan sponsors feel that they have hired someone to fulfill the fiduciary role and so their responsibility has been met. In order to overcome this, plan sponsors should form a 401k plan committee (if not already in place), meet regularly (suggest quarterly), and document how they are monitoring their service providers, benchmarking plan fees, and monitoring investments. All of this can be done with the help of third parties, but with involvement from the plan sponsor.”

#7: Regulatory Filings

“Plan administration can be complicated, and unfortunately, missing a step can be easy,” says Syed Nishat, Partner at Wall Street Alliance Group in New York City. “Along with the other required paperwork, most plan sponsors are required to file Form 5500, which is the Annual Return/ Report of Employee Benefit Plan. Even small businesses consisting only of owners and their spouses must file in any year the plan assets go over $250,000, though they are allowed to file the simpler Form 5500-EZ. This filing is very often overlooked in the course of a year. If not filed, the IRS will send a query, which should be replied to with the correct filing along with an explanation. However, there are potential fines or other penalties that could result from future missing of this filing. One of the easiest solutions is to set an annual reminder before the due date to schedule the filing and make sure that it happens on time. Another solution that is more overarching addresses the fact that 401k plans have complex rules from initial adoption through continued administration. One way to remove that burden from smaller companies is for employers to pool assets and employees to create a larger plan. These Pooled Employer Plans, or PEPs, are a newer option for small businesses; with the pooled larger plan, they have access to benefits and funds that smaller plans may not have. Also, the regulations on PEPs allow the administration of the plan to be handled by professional fiduciaries, which can reduce liability and costs at the same time.”

Do you know plan sponsors who assume these duties are being carried out?

When was the last time they check to make sure? This is the real question.

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