

HOW TO REDUCE YOUR FIDUCIARY RISK

If you sponsor a 401(k) plan for your employees, you are a fiduciary to the plan. That is why many business owners, executives and HR staff turn to independent registered investment advisors for professional advice.

Many of the actions required to operate a company-sponsored 401(k) plan involve fiduciary decisions. Under the Employee Retirement Income Security Act (ERISA) of 1974, your fiduciary obligations include:

- ▲ **Duty of Loyalty:** You must act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and minimizing expenses.
- ▲ **Duty to Act Prudently:** You must act with the care, skill, prudence and diligence of an investment expert.
- ▲ **Duty of Diversification:** Your plan must have diversified investments to minimize the risk of large losses.
- ▲ **Duty to Follow Plan Documents.**

TAKE STEPS TO REDUCE FIDUCIARY LIABILITY

With fiduciary responsibility also comes potential liability. While you can't completely insulate yourself from this risk, you can take steps to minimize your personal liability as a plan fiduciary.

- ▲ **Follow ERISA regulations and the Uniform Prudent Investors Act.** By following these rules, you can help protect yourself from litigation in the event of a Department of Labor (DOL) investigation of your plan or a lawsuit filed by an employee(s). Your independent registered investment advisor can help ensure you are in compliance with ERISA. (Note that it is critical to keep current with these regulations as they often change.)
- ▲ **Adopt formal procedures and processes:**
 - *Form an Investment Committee.*
 - *Record minutes of your 401(k) plan meetings.*
 - *Monitor the funds and plan for all costs.*
 - *Review the investment performance.*
 - *Review the risk of the selected investments.*
 - *Review and implement an Investment Policy Statement.*
- ▲ **Hire a third party expert(s) for advice,** such as an independent registered investment advisor, to help:
 - *Keep the plan compliant.*
 - *Educate employees/plan participants.*
 - *Meet one-on-one with employees upon request.*
 - *Work with the ERISA 3(38) investment manager, which will accept all of your investment fiduciary liability. This is an ERISA accepted expense.*
- ▲ **Be aware of what is—and is not—covered under a fiduciary warranty offered by some insurance plans.** Keep in mind that:
 - *Unless you (i.e. the plan sponsor), write a corporate or personal check for this warranty, it offers no fiduciary protection.*
 - *Plan assets can only be used for the exclusive interest of plan participants and beneficiaries. If you use plan assets to protect you from fiduciary liability, you are committing a fiduciary breach and would be liable for all losses.*
- ▲ **Use pre-mixed model portfolios** that use the generally accepted financial theory (mentioned in the Uniform Prudent Investors Act, i.e., Modern Portfolio Theory) with uncorrelated asset classes.
- ▲ **Use low-cost funds.** These institutional structured funds meet the requirements for prudent investment alternatives.
- ▲ **Provide transparency** (i.e., who is getting paid for what and for how much).
- ▲ **Provide investment education and advice from qualified professionals.** Note the following differences.

BROKERS AND AGENTS ARE:

- ▲ Allowed to give *nonspecific* investment education to plan participants.
- ▲ *Not* allowed to provide one-on-one advice to participants, as this could potentially be “conflicted advice.” In other words, is the broker or agent recommending a product with the best interest of the participant or in the best interest of the broker/agent?

INDEPENDENT REGISTERED INVESTMENT ADVISORS ARE:

- ▲ Allowed to give *nonspecific* investment education to plan participants.
- ▲ Allowed to provide *one-on-one* advice to participants. The regulations endorse this approach through the Conflicted Investment Advice Act of 2009. Participants are generally more prepared for a successful retirement when independent, unbiased advice is provided.

GET THE FACTS. CONTACT:

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