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FIDUCIARY LIABILITY— IMPORTANT RESPONSES TO FREQUENTLY ASKED QUESTIONS

1. What is ERISA?

ERISA (Employment Retirement Income Security Act) is a federal law that governs employee benefits, including health care plans. The law requires that a fiduciary of an employee benefit plan act solely in the best interest of participants and beneficiaries. Fiduciaries are held personally liable for any breach of duty.

2. What types of benefit plans fall under ERISA's regulations?

The requirements of ERISA apply generally to all "employee benefit plans" established or maintained by an employer. These types of plans include (but are not limited to):

- Pension benefit plans, including 401ks, deferred compensation agreements, severance pay plans, and (in certain cases) Stock Option plans.
- Welfare pay plans, including medical, surgical, or hospital care benefits, vacation pay plans, Life, Accidental Death and Dismemberment, and disability plans.

3. Aren't an employer's fiduciary responsibility exposure covered under other insurance policies?

Many fiduciaries are under the mistaken impression that their ERISA-mandated fidelity bond covers their fiduciary exposure. The ERISA fidelity bond protects the Plan from loss due to dishonest acts of trustees.

The Rockwood Fiduciary policy protects the personal assets of a plan fiduciary against breach of duty allegations. Covered acts include failure to properly administer a plan, failure to properly add or delete participants, and errors and omissions committed while selecting a plan or managing its assets.

4. Is there still a fiduciary exposure if employees make their own 401k investment decisions?

YES. It is the responsibility of the Department of Labor to ensure that fiduciaries adequately educate employees regarding available investment options. Plan fiduciaries are also ultimately responsible for determining what investment options will be available to participants and have a duty to monitor those investment vehicles to ensure performance.

5. Is there still a fiduciary exposure if all plan administration is handled by an outside third party?

YES. Plan fiduciaries can never fully transfer the responsibility for ERISA compliance to another party. They may still be held liable even if all aspects of plan administration have been delegated to an outside firm. An employer must investigate the financial stability of any firm that will control plan assets and periodically monitor their performance.

6. Can a current fiduciary be held liable for the investment acts of his/her predecessor?

YES. If the selection of plan investments by a previous fiduciary constitutes a breach of duty or a prohibited transaction, a successor fiduciary has a duty to dispose of these investments upon assuming the responsibility. Further, a fiduciary has the continuing duty to advise the plan to divest of unlawful or imprudent investments and its failure to do so increases the risk of a lawsuit each time the fund is negatively impacted.

7. How prevalent is ERISA-related litigation?

Recent Wyatt Fiduciary Liability surveys show a significant increase in the number of ERISA-related suits. The average claim is $800,000 - half of which is defense costs. Plan Fiduciaries now surpass the medical profession as a target for litigation.

8. Who is most likely to initiate legal action against a plan fiduciary?

While employees (plan participants) are the parties most likely to bring suit against a plan fiduciary for breach of duty, they are not the only ones. Several government agencies, most notably the Department of Labor and the Internal Revenue Service, are responsible for monitoring ERISA compliance and reporting requirements.

9. What is a duty to defend policy?

With duty to defend coverage, an insurance company is obligated to assume the defense of any covered claim. It uses a panel of experienced law firms to defend you within the limits of liability and, as part of its defense obligation, pays the associated expenses.

10. What does "claims made" mean?

The Rockwood Fiduciary product is written on a claims-made basis, meaning that it covers all claims reported to the insurer within the policy period regardless of when it occurred.

Have more questions?

Our knowledgeable staff of underwriters is available to assist you.

Contact us toll-free at: 800-330-7571.