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ROCNEXT

Nextpert
By Bob Judd

Managing Retirement For Others

"I've got a business to run."

How many times have you said that or thought it when someone wanted to talk to you about your company retirement plan?

One thing is for sure, most employers are not looking to hone their skills to become prudent experts on retirement plan fiduciary issues.

Yet the reason you have been given the distinguished title of "fiduciary" is that you are the steward of other people's money — your current and often past employees — and "prudent expert" is the standard you are held to.

Do you wonder when you signed up for that? It happened the day you decided to offer a 401(k) or other type of retirement plan.

Let me be clear, this isn't meant to scare you or to fabricate a new crisis. The good news is there have been very few cases brought against small employers that didn't involve fraud.

However, the Department of Labor audits and enforcement are increasing, as are lawsuits. I might add the liability is personal. While the company structure might protect your assets from other potential company liabilities, as a fiduciary to a retirement plan you are personally liable.

In the never ending jargon of retirement plans, you are likely to hear references to 3(16), 3(21) and 3(38) fiduciary services. These are code sections and each provides different levels of protection.

A 3(16) fiduciary provider will generally cover the administrative aspects of your plan, responsible for operating your plan correctly and in accordance with the plan document. This is the area most likely to come under scrutiny in an audit.

Limited scope 3(21) and 3(38) fiduciaries take on more specific roles and responsibilities. They focus on the plan investment selections and investment monitoring process. The difference between is that a limited scope 3(21) provides advice for this function and a 3(38) takes on full discretionary control.

THIS WEEK'S NEXTPERT

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BOB JUDD

Other methods to help protect you might include the purchase of fiduciary liability insurance or a multiple employer plan. Whatever you decide, make sure you are working with a professional firm that can ensure you are getting what you bargained for.

Other things to consider:

» Stay focused on what's in the best interest of the participants;

» Document your processes and decision making;

» Choose your plan providers based on experience and knowledge;

» Pay close attention to plan fees; and

» Consider paying for some services through the company rather than out of the plan.

Always remember, you can never remove all of your fiduciary duties. You'll always have an obligation to monitor those you hire, if you decide to let someone else run your plan.

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