

Fiduciary Basics FAQ

Fiduciary Basics

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for employee benefit plans maintained by private-sector employers. ERISA includes requirements for both retirement plans (for example, 401(k) plans) and welfare benefit plans (for example, group health, dental, vision, life plans). ERISA includes standards of conduct for those who manage an employee benefit plan and its assets.

Who is a Fiduciary?

A **fiduciary** is a person or entity with the discretionary authority to control and manage the operation and administration of a benefit plan covered by ERISA. Many of the actions involved in operating an employee benefit plan make the person or entity performing them a fiduciary. Using discretion in administering and managing a plan or controlling the plan's assets makes that person a fiduciary to the extent of the person's discretion or control. Thus, fiduciary status is based on the functions performed for the plan, not just a person's title.

Fiduciaries are subject to standards of conduct because they act on behalf of participants in a group health plan and their beneficiaries. Fiduciary responsibilities under an ERISA-covered group health plan include:

- Acting solely in the interests of participants and beneficiaries.
- Acting for the exclusive purpose of providing plan benefits.
- Carrying out duties prudently
- Following the plan documents governing the plan (unless inconsistent with ERIS).
- Holding plan assets in trust.
- Paying only reasonable plan expenses.

The duty to act prudently is one of a fiduciary's central responsibilities under ERISA. It requires expertise in a variety of areas. A fiduciary who lacks that expertise will want to hire someone with professional knowledge to carry out those functions. Prudence focuses on the process for making fiduciary decisions; therefore, decisions and the basis for those decisions should be documented.

Following the terms of the plan document is also an important responsibility. The plan document serves as the foundation for plan operations. Employers will want to be familiar with their plan document, especially when it is drawn up by a third-party service provider, and periodically review the document to make sure it remains current.

In addition, a fiduciary should be aware of others who serve as fiduciaries to the same plan, since all fiduciaries have potential liability for the actions of their co-fiduciaries. For example, if a fiduciary knowingly participates in another fiduciary's breach of responsibility, conceals the breach or does not act to correct it, that fiduciary is liable as well.

Understanding and complying with the fiduciary responsibilities is critical as failure to follow the fiduciary standards of conduct may result in personal liability.

Who is Not a Fiduciary?

Attorneys, accountants and actuaries generally are not fiduciaries when acting solely in their professional capacities. Similarly, a third-party administrator (TPA), recordkeeper or utilization reviewer who performs solely clerical tasks is not a fiduciary; however, that may change if the entity exercises discretion in making decisions regarding a participant's eligibility for benefits.

Also, several decisions are not fiduciary actions, but, rather, are business decisions made by the employer. For example, the decisions to establish a plan, determine the benefit package, include certain features in a plan, amend a plan and terminate a plan are employer business decisions not governed by ERISA. When making these decisions, an employer is acting on behalf of its business, not the plan, and, therefore, is not a fiduciary. However, when an employer (or someone hired by the employer) takes steps to implement these decisions, that entity is acting on behalf of the plan and, in carrying out these actions, may be a fiduciary.

More Information?

For more information, go to www.dol.gov/general/topic/retirement/fiduciaryresp