Meet Your Fiduciary Obligations . . . With a Little Help

When most employers establish a retirement plan for their business, they think about the benefit that the plan will bring to those who work in the enterprise. They don't always consider the extent to which these benefits come with a cost. Of course, they know that plans cost money: not only do employees place their own earnings into the plan, but often the employer also contributes. And certainly there are administrative costs. But those who sponsor retirement plans should also clearly understand that they must run their plans with the greatest standard of care—or risk personal liability if they fall short.

Employers Are Fiduciaries

By default, employers (plan sponsors) are fiduciaries of the retirement plans that they maintain. First, ERISA Section 3(16) defines "plan administrator" as the plan sponsor, unless a different plan administrator has been named. But in addition, ERISA Sec. 3(21) specifically defines a plan fiduciary as someone who had discretionary authority or responsibility in the administration of the plan. So while it is possible—and often preferable—to delegate many administrative duties to others, this ultimate discretionary authority rests with the employer: the authority to select suitable people or entities to carry out these delegated duties.

Considering the complexity of current retirement plan rules, it's not surprising that many employers get tripped up at times. Over the decades, more and more requirements have been layered on top of one another, sometimes even in the name of pension "simplification." Some common administrative challenges include:

- Enrolling employees when they become eligible,
- Timely depositing participant deferrals and employer contributions,
- Administering plan loan provisions,
- Amending and restating plan provisions, and
- Properly correcting errors once they're discovered.

These are just a few of the areas in which employers can misstep. The list of possible errors is nearly limitless. And as new plan provisions are added by Congress or through the regulatory process, there are even more rules to trip up employers.

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New Plan Provisions Create Even More Challenges

In the past few years, we have seen significant new provisions in the SECURE Act (SECURE 1.0), the IRS's proposed RMD regulations, and the SECURE 2.0 Act. Below is a partial list of new provisions for 2024 and other items that are getting increased attention.

- New exceptions to the 10% early distribution penalty (e.g., for emergencies and for domestic abuse victims).
- Requirement to allow long-term, part-time employees to make salary deferrals.
- Changes to the cash-out rules and to providing small incentives to increase participation.

Employers are responsible for monitoring more and more changes to the retirement plan rules. Even for those service providers who deal with these rules every day, the sheer amount of information can be daunting. But for employers—who simply want to run their enterprises without unnecessary burdens—effectively administering their plans can be overwhelming.

Pentegra Can Help

For many employers, plan administration is a challenge. Inevitable errors can happen. After all, you don't know what you don't know. Fiduciary oversight and a team of professionals on board helps sponsors avoid such errors in the first place.

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