
Fiduciary Liability PLUS+SM Policy

Think ERISA Section 404(c) Eliminates a Fiduciary's Personal Liability Associated with 401(k) Plans? THINK AGAIN!

401(k) plans continue to grow in popularity. Most employers and individual fiduciaries are under the belief that their fiduciary liability has been completely eliminated by providing a 401(k) plan which complies with ERISA section 404(c). Section 404(c) does reduce a fiduciary's liability because participants control the assets in their retirement accounts. However, BE AWARE, important responsibilities and potential liabilities **cannot** be transferred. Under ERISA section 404(c) a sponsor is still required to:

- ▶ Provide sufficient information and education so participants can make informed decision.
- ▶ Provide at least three core investment alternatives.
- ▶ Offer investment alternatives with various levels of risk. Diversification must be provided.
- ▶ Select competent investment managers.
- ▶ Routinely monitor and evaluate investment performance.
- ▶ Control costs, which are in most cases, borne by the participants.
- ▶ Provide a mechanism for self-direction of participant's investments.

With these responsibilities comes significant personal liability. The following provide examples of lawsuits involving 401(k) plans:

- \$1,250,000** A group of employees alleged that the newly selected outside plan administrator **IMPROPERLY DELAYED TRANSFERRING FUND BALANCES** in the plan from one investment option to another, as directed by the participants. Subsequently the employees sued the plan trustees to recover more than \$1,000,000 in lost investment income. Defense expenses were \$250,000.
- \$858,000** Legal action brought by employees alleged the wrongful elimination of a profitable investment option and improper selection of another and **FAILURE TO MONITOR** the actions of the outside investment manager. Defense costs were \$358,000 and the jury awarded the plaintiffs \$500,000 in damages.
- \$350,000** Two employees approaching retirement age discovered they had never enrolled in the company's 401(k) plan. The employees sued the company and plan trustees alleging the plan **ADMINISTRATORS FAILED TO PROPERLY ADVISE** them how to enroll and the enrollment was not automatic. The value of the alleged lost benefits exceeded \$150,000, and defense expenses were in excess of \$200,000.
- \$400,000** Plan participants alleged that the fiduciaries of a **401(k) PLAN** had failed to divest the plan of an investment option that was not keeping pace with the performance of the comparable index and **RESULTED IN POOR RETURNS**. The case settled for \$250,000 after \$150,000 in legal fees had been spent.
- \$250,000** Employees sued the plan fiduciaries alleging that they breached their fiduciary duties by providing an option to invest in a guaranteed investment option backed by a poorly performing insurance company. They further alleged that plan fiduciaries **BREACHED THEIR DUTY OF DISCLOSURE** by providing misleading or incomplete communications to participants. The case eventually settled for \$250,000.
- \$124,000** DOL has alleged a wholesale electrical company violated ERISA by **CHARGING EXCESSIVE MANAGEMENT FEES** to the Plan.

The burden of proof for compliance with all provisions of ERISA lies with the sponsor/employer. With average attorney fees of \$250/hour, even allegation will be costly to defend. **St. Paul Travelers Bond Fiduciary Liability PLUS+SM Policy** protects both individual fiduciaries and plan sponsors for claims made for actual or alleged breached of fiduciary duty.

Claims illustrate potential loss scenarios, and are based on actual claims or hypothetical examples. Insurance policy coverage ultimately depends upon the facts of each case and the terms, exclusions and limitations of each policy. For more information, contact your local Travelers Bond Representative.