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"Special Report"

Fiduciary Liability: Another Hotbed For Employee Lawsuits And You May Be Personally Liable!

*By Tom Baecker
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Benefit Plans and Your Fiduciary Responsibility

The cauldron is boiling with administrators of employee benefit plans because of employee lawsuits. Not just employment law violations, but employee benefit plan fiduciaries and trustees can be, and often are, held personally liable if they fail to act solely in the interests of employee participants and beneficiaries. Here are a few actual court cases:

- \$230,000 defense and settlement costs leveled against a health plan trustee who allegedly failed to monitor performance of the plan's third party administrator.
- \$439,560 suit lost by trustees of a profit-sharing plan because they invested in a few stocks in a single industry.
- \$56,340 costs plus damages against a health plan trustee for wrongfully denying coverage for surgery.
- \$99,702 settlement against a profit sharing plan supervisor for failing to notify employees who reached age 60 of new account options.

Eleven Mistakes That Invite Lawsuits:

1. Failing to inform employees.
2. Misrepresenting plan information to employees.
3. Advising employees improperly
4. Failing to monitor work done for the plan by administrators and service providers.

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5. Failing to recognize a conflict of interest when making plan decisions.
6. Failing to meet regulatory and filing requirements.
7. Making imprudent investment decisions.
8. Failing to meet pension plan funding requirements.
9. Terminating a plan improperly.
10. Violating COBRA.
11. Faulty enrollment or cancellation of employees

ERISA became law in 1974 to curtail abuses in employee benefit plans. Employee benefit plans are defined as pension, profit-sharing, 401K, health, dental, life insurance plans and even informal programs like sick pay, vacation and severance pay. ERISA defines a fiduciary as any employee, officer, director, committee member, and trustee or plan administrator having discretionary control over plan assets.

Take this quiz to see if you are a fiduciary as defined by law:

- Are you specifically identified in the written plan document?
- Do you help manage the plan or its assets?
- Do you have decision-making authority for the plan purchase?
- Do you participate in hiring the plan administrator?
- Do you perform everyday clerical responsibilities for the plan?

Any "yes" answer and you may be a fiduciary under ERISA. If so you must become familiar about ERISA and understand your duties, responsibilities and liabilities. Even if you're well schooled in ERISA, your personal risk may be too great not to check out the special insurance available to protect you.

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