Kidder Benefits Consultants, Inc.
5700 Westown Parkway, Suite 100
West Des Moines, IA 50266
www.askkidder.com
phone 515.254.1178
toll free 800.300.3086

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Ask Kidder.

Is a lawsuit in your plan's future?

You don't have to be a billion-dollar plan to be sued by participants for breaching your fiduciary duty. Class action lawsuits have recently been filed against plans with less than $20 million in assets. In many cases, these lawsuits claim that plan fiduciaries have breached their fiduciary duty by:

- not having policies in place;
- not conducting investment due diligence;
- not actively monitoring expenses of recordkeeping and investment platforms;
- not reviewing fees; and
- not documenting decisions.

Success in avoiding or defending such lawsuits depends on maintaining a proper ***fiduciary governance process***. That's why qualified plan sponsors must develop and document compliant policies and procedures.

What is a "proper" fiduciary governance process?

It begins with a fiduciary committee charter, outlining:

- the role and responsibilities of the committee;
- the investment policy statement;
- the investment due diligence process and any changes that are to be considered;
- a regular review of fees;
- a determination of expectations and review of participant outcomes and results;
- the participant education program; and
- regular committee meetings documented by minutes.

For some plan sponsors, fiduciary governance may be more comprehensive and in-depth. For others, it may simply cover the basics. The key is to have an efficient and effective committee with a consistent documented process. Depending on the size of the plan, meetings may be quarterly, semi-annually or annually. For smaller plans, voting members of the committee may be just one or two company decision-makers.

An established and documented fiduciary and due diligence process will make participants more comfortable. They'll know that someone is paying attention and looking out for their best interests. They'll also know that the financial professionals involved with their plan have significant fiduciary responsibilities and liability. The result is greater participant satisfaction and a minimized potential for lawsuits.

Will the new administration change fiduciary rules?

Even if President-elect Donald Trump rolls back, defers or works with Congress to change fiduciary rules, participants will continue to have the right to challenge your fiduciary governance process. In fact, the potential for lawsuits may expand.

What best practices should you adopt?

Fiduciary governance is not simply having the lowest cost or the best investments. It is a holistic approach to improving results and can include:

- the right plan design;
- compliant plan documents;
- accurate plan administration, compliance testing and tax reporting;
- appropriate investment choices and investment due diligence;
- adequate participant education and participation; and
- the ability to measure and improve the retirement readiness of participants.

Clearly, the key to creating and managing a successful, lawsuit-proof qualified plan is a fiduciary process that monitors the total plan picture, engages competent professionals and measures results.

While cost is a factor, it can go both ways. High costs and investment fees can negatively impact the accumulation of retirement assets. But low-cost plans can suffer from inadequate compliance or poor investment performance. Many lawsuits focus on fees and investment costs.

Investment choice is another area of concern, with suits focusing on having too many or not enough investment options.

But when qualified plans are examined or audited by the IRS or DOL, the most critical compliance issues and penalties relate to plan documents, plan administration, compliance testing and plan operations.

The common denominator in both the court cases and regulatory audits is effective monitoring and documentation of the fiduciary decision-making process. The goal is to improve retirement readiness and outcomes for plan participants.

How can Kidder help?

Over the past decade, we have significantly expanded our suite of fiduciary governance services for plan sponsors and financial professionals. As a result, we serve hundreds of clients across America.

Kidder can help guide you and your financial professional. Call us with any questions at **(800) 300-3086.**