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Company Executives and Fiduciary Liability

Under the Employee Retirement Income Security Act of 1974 (ERISA) and Department of Labor (DOL) regulations and guidelines, individuals identified as their employer's fiduciaries are legally required and held accountable to act in the best interests of the plan's participants.

The DOL considers fiduciary obligations and standards to be exceedingly important and imposes severe penalties for a breach of fiduciary responsibility. Claims brought by past or present employees, or their families, present significant financial exposure including loss indemnification, penalties, and associated legal fees. In fact, company executives and owners may be held personally liable in the case of violations that result in plan or benefit losses.

To ensure some degree of protection for employers and participants, ERISA requires sponsors to purchase a fidelity bond. A fidelity bond insures against the improper management and resulting losses with respect to plan assets. ERISA requires the amount of coverage to be equal to or greater than 10 percent of the plan assets, to a maximum of $500,000. Of course, plan sponsors can secure coverage in excess of that amount.

A common misconception is that the fidelity bond provides protection to plan fiduciaries for a breach of responsibility. It does not. There is a clear distinction between the protection afforded by a fidelity bond (required for the benefit of the sponsor and plan participants) and that provided by fiduciary liability insurance (optional). The latter provides protection to fiduciaries.

ERISA Fidelity Bond

The ERISA fidelity bond is intended to protect a qualified plan, such as a 401(k) or profit sharing plan, from losses caused by theft, fraud, or other dishonesty on the part of a plan official or someone who handles the assets.

Fiduciary Liability Insurance

Fiduciary liability insurance protects the individual fiduciary(ies) associated with the plan's management. There are three fundamental approaches to implementing fiduciary liability coverage:

- The plan may purchase the insurance, or
- Each fiduciary may purchase liability coverage, or
- The plan sponsor can secure a fiduciary liability policy

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The distinction between the coverage provided by the (ERISA-required) fidelity bond and the optional fiduciary liability insurance is something all plan fiduciaries should understand—especially because they are held personally liable.

A Prudent Decision

Generally, fiduciary liability insurance is readily available at a modest cost. Purchasing such coverage provides an important layer of insulation from the broad array of potential liability associated with being a fiduciary. ■

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