An Employer's Quick Guide to the ABCDs of 401(k) Fiduciary Responsibility

Do you know what John Deere, Wal-Mart, and Lockheed Martin have in common? They all sponsor retirement plans and have come under intense legal scrutiny over the past year, as the retirement plan landscape, governed by the Employee Retirement Income Security Act (ERISA), continues to evolve as one of the hottest areas in the legal arena.

Fortunately, ERISA is a law governed by diligent processes and procedures. By partnering with a trusted advisor who has a special focus on retirement plans, and by following the simple ABCs described below, you can be well on your way to fulfilling your fiduciary responsibilities. Because the question is no longer whether you are or are not a fiduciary, but how you can mitigate your responsibilities and personal liability.

A – Act, Avoid, and Advise

Act as a prudent person would for the exclusive benefit of plan participants and their beneficiaries. As a fiduciary, you must carry out your duties with the care, skill, prudence, and diligence that a prudent person, acting in a like capacity and familiar with such matters, would do.

Avoid prohibited transactions and conflicts of interest. ERISA's rules of prohibited transactions involve parties of interest to the plan, prohibiting them for engaging in various acts of self-dealing or conflicts of interest. **For example:** A plan fiduciary cannot cause or permit the plan to deposit money in certain banks that loaned him money.

Advise participants on a consistent and regular basis through the help of your plan provider and trusted advisor on the benefits of joining the plan and how to maximize the plan's benefits. Group and individual employee meetings should be conducted at least annually, and a list of attendees should be kept in your fiduciary file.

- **A word to the wise:** The difference between advice and education is a gray area and a current hot button for legislators. Because an advisor's compensation could be directly affected by the recommendations he or she makes, the advisor has an inherent conflict of interest and therefore must walk a fine line between advice and education.

B – Benchmark

Benchmark all service providers, investments, and plan costs regularly. Service providers should be monitored and marketed through a thorough RFP process every three years to ensure that services received and fees paid are reasonable and meet the needs of the plan.

- Plan investment options must be benchmarked regularly against performance standards outlined in an Investment Policy Statement (IPS) and removed if not meeting performance standards.

C – Be Consistent

Consistently make decisions with your retirement plan or investment committee.

- All plan decisions should be made by the retirement committee (two to five individuals who are involved in day-to-day plan management, in addition to your advisor) that meets on a consistent basis (e.g., at least annually).
- The decisions to add, remove, or replace an investment option must be made by following a consistent diligence process outlined in the IPS.
- All benchmarking should be done using consistent criteria.
- Employee contributions must be submitted on a consistent, timely basis; this is one of the most misunderstood rules by plan employers.

D – Document

Document, document, document; and keep everything in a fiduciary file. If you are ever audited, the first items typically requested are your committee meeting minutes.

- All decisions and the process followed to make those decisions must be documented in a fiduciary file.
- All retirement or investment committee meetings must be documented.
- All RFP and benchmarking must be documented.
- All investment monitoring and decisions must be documented in the IPS.
- All education meetings with employees must be documented.
- All fiduciaries must act in accordance with the plan document, which should ensure that you are taking advantage of any available safe harbors.

Although the large corporate companies mentioned at the beginning of this article may garner most of the spotlight, the litigious nature of our society has made its way to Main Street and just as many lawsuits are brought against small businesses. **So it is important to note that fiduciary responsibility can be shared, but it cannot be delegated.** Follow the ABCs described above and partner with an advisor who acknowledges his or her co-fiduciary status in writing. If you do that, you can help ensure your plan participants will have the best chance of maximizing their retirement benefits.

To learn more about our firm and the services we offer, please visit our website (www.psabenefits.com) or contact us at (855) 860-401K.