ECKERT SEAMANS
ATTORNEYS AT LAW

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EMPLOYEE BENEFITS ALERT

FIDUCIARY TRAINING

Do your employment duties require you to become involved in operating your employer's employee benefits plan? If so, you may be a fiduciary with respect to that plan. If you are a fiduciary, there are certain duties, referred to as fiduciary duties, that you must fulfill with respect to that plan or potentially be subject to personal liability.

Many of the actions involved in operating a plan make the person or entity performing them a fiduciary. Using discretion in administering and managing a plan or controlling the plan's assets makes that person a fiduciary to the extent of that discretion or control. For example, if you are the individual who selects the funds to be offered under your employer's 401(k) plan, then you are probably a fiduciary under the law at least with respect to the selection of the investment funds.

Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants under the plan and their beneficiaries. These responsibilities include acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them, carrying out their duties prudently, following the plan documents, diversifying plan investments, and paying only reasonable plan expenses. Acting prudently is one of a fiduciary's central responsibilities. Prudence focuses on the process for making fiduciary decisions, not necessarily whether the decision is right or wrong. For instance, in hiring any plan service provider a fiduciary should survey a number of potential providers asking for the same information and providing the same requirements. By doing so, a fiduciary can document the process in making meaningful comparison and selection.

Fiduciary training means assisting employees who have assumed fiduciary duties in understanding their fiduciary responsibility under the law and how to manage the associated liabilities from both a legal and corporate compliance prospective. A good fiduciary program should teach the employees the legal rules and how to manage liability in light of their employer's particular circumstances. There has been a large increases in a number of lawsuits alleging that those responsible for the administration of the plan or the selection of investment funds to be offered under the plan have breached their fiduciary duties. Many of these lawsuits are focused on the investment fees charged to the plan's assets. Prevailing plaintiffs can often recover attorney's fees in these cases.

There are many providers of fiduciary training as well as resources available through the U.S. Department of Labor, Employee Benefits Security Administration. If you would like further information about fiduciary training, please do not hesitate to contact any member of our Employee Benefits Group.

The Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions about this alert or any other issues relating to employee benefits, please contact ***Sandra Mihok*** *at 412.566.1903,* ***Kathryn English*** *at 412.566.1226,* ***Heather Stone Fletcher*** *at 412.566.6112,* ***Michael Herzog*** *at 412.566.6130, or* ***Paul Yenerall*** *at 412.566.1944.*