10 Terrifying Questions for 401(k) Plan Sponsors

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YOUR PLAN SPONSOR CLIENTS might be acting as fiduciaries; then again they might not. How do you know? By asking them the following questions. If they're failing in their responsibilty, you (and they) will know almost immediately.

1 ***Why does your company offer a 401 (k) plan and are you meeting your objectives?***
Recruiting new employees, retaining employees, remuneration to employees.

2 ***Do you know your 401(k) plan fiduciaries?***
Recall that every plan has to have at least one named fiduciary, and there can be functional fiduciaries where one exercises control regarding the management of an employee benefit plan or disposition of its assets.

3 ***Have all of your plan fiduciaries read and gained an understanding of the plan documents?***
ERISA Section 404(a) requires that plan fiduciaries abide by plan documents. Thus, a fiduciary must read and completely comprehend the plan documents as a first step to comply with the law.

4 ***Do you have the appropriate Section 412 bond?***
ERISA Section 412 requires that every plan be bonded in an amount not less than 10 percent of plan funds, but generally not to exceed $500,000.

5 ***Do you have insurance?***
Plan fiduciaries are exposed to personal liability and Section 412 bonds may be inapplicable or inadequate in addressing an alleged breach of fiduciary duty. Therefore, fiduciary liability insurance coverage is necessary.

6 ***Is your plan a 404(c) plan?***
If your company provides a plan under 404(c) whereby it provides a pool of different funds from which your participants select investments, you are responsible for choosing the universe of funds and educating the participants as required. If you comply with 404(c) requirements, you are not responsible for the participants' specific allocation.

7 ***Do you have a vendor selection process in place for retention and review?***
ERISA permits fiduciaries to delegate to professionals, but they must do so prudently in regard to selection, retention, and fees and expenses and have a well-documented process in place to document compliance.

8 ***Do you conduct regular investment committee meetings and prepare minutes to reflect issues discussed and actions taken?***
The Section 404(a) duty-of-prudence can best be served by a well-documented, effective process.

9 ***Do you regularly benchmark your investment options in regard to performance, fees, and expenses?***
The Section 404(a) duty of loyalty includes defraying reasonable fees and costs and acting for the exclusive benefit of plan participants and their beneficiaries. A well-documented process in this regard is necessary and must go beyond just performance comparisons, and include fees and expenses.

10 ***Do you compare the effort expended in providing health care benefits to the effort your company puts into providing 401(k) benefits?***

For benchmarking and comparison purposes, an interesting examination may be the efforts put forth by your company in selecting a health care plan when compared to the efforts in selecting a 401(k) plan. After all, there are no fiduciary duties or personal liability involved in selecting a health care plan, and, more importantly, health care plans mainly put company funds at stake. In contrast, 401(k) plans involve fiduciary duties, and notably, involve participant funds. Thus, where participant funds are at stake, your company must put in sufficient time and effort, which should be at least as much as, if not more than, that put into health care plans. K

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