CERITY PARTNERS®

FIDUCIARY LIABILITY

One Survey That Employers Should Never Ignore

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Fiduciary Liability Insurance is Changing

Actually, it's not a survey, but a questionnaire that the major commercial insurance carriers – think Travelers, Chubb, and AIG – are requiring prior to offering/renewing liability coverage for companies. Regulators and plaintiff law firms are targeting employer sponsored retirement plans at an alarming rate focusing on excessive fees, breach of fiduciary duties, and conflicts of interest. Concurrently, the market for fiduciary liability insurance is experiencing higher premiums, lower coverage limits, and increased retention limits (deductibles) in order to account for the increased risks.

The extreme pace of new retirement plan lawsuits these past few years is showing the legally precarious spot many plan fiduciaries occupy, and that position is only becoming more difficult. One of the primary sources of supplemental protection employers seek, fiduciary liability insurance, is getting harder to qualify for now that the insurance industry has had to write more than a billion dollars in settlement checks just in the past few years.

The Questionnaire Details

Over the past 24 months more and more employers have been receiving a detailed questionnaire regarding the specifics of the their retirement plan offering(s). The underwriters of their commercial insurance are requiring completion of this questionnaire prior to offering or renewing coverage. Simply stated, businesses must answer the questions in a way that shows they're following best practices to receive a favorable result. Answer the questions indicating to the underwriter that your retirement plan contains elements that have been pointed out by litigators and the courts as not being in the best interest of plan participants, and risk being denied coverage.

These questionnaires are focused on all aspects of fees, but particularly recordkeeper and investment fees. In addition, there are many questions on overall plan governance, and whether such a role has been outsourced to a qualified 3rd party fiduciary to assist the plan fiduciaries with oversight.

Why You Should Have Fiduciary Liability Insurance?

Fiduciary liability insurance, unlike ERISA bonding, is not a legal requirement for plan sponsors. As a practical matter though, many plan fiduciaries should consider such coverage. This is because plan sponsors often incorrectly assume that corporate Errors and Omissions policies will cover a fiduciary breach, despite the fact that most of these policies specifically exclude ERISA claims.

While, historically, class action lawsuits have been primarily filed against large plans such as Universities and Healthcare Organizations, it is becoming clear that employers in the small to mid-market are not immune from these legal actions. Every sector and industry class is a target, as litigators exhaust the number of large employers to pursue and begin to evaluate plans of all sizes.

How Cerity Partners Helps Minimize Fiduciary Liability Risk?

So, is there a "vaccine" to prevent paying higher liability insurance premiums and help avoid ERISA litigation? While there is no airtight process that can guarantee these issues won't present themselves, following best practices now, in advance of receiving the underwriter's questionnaire, can go a long way in lessening your risk of both litigation and less than favorable insurance coverage.

Our complimentary liability, expense, and overall plan design analysis can help employers evaluate if their retirement offering is following recommended best practices while providing enhancements that result in benefits for the plan sponsor and participants alike.

Cerity Partners – Your Retirement Plan Experts.

Interested in learning how we can help you thoughtfully respond to insurance questionnaires, and help your organization implement best fiduciary practices across your retirement plans? Contact us today!

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