HOW TO MANAGE RETIREMENT PLAN FIDUCIARY RISKS

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COMPANY BIO

The ASAE Retirement Trust is an innovative retirement plan choice created by ASAE specifically to meet the needs of associations. Along with fiduciary protections, it has lower fees and a higher level of service than most plans available today. Through the ASAE Retirement Trust, organizations gain the ability to address two pressing talent management challenges: financial retirement readiness among current staff and attracting and retaining high quality, skilled employees in an increasingly competitive workforce.

Can you manage your retirement plan fiduciary risks now to avoid problems later?

Yes, here's how.

All retirement plans follow a written instrument called the plan document. Typically, the plan document lists those individuals (by job title) who are accountable for the various fiduciary responsibilities of the plan. If the plan document does not happen to name them, the fiduciaries will be those persons at the organization who are responsible for deciding to offer the plan and/or are functionally doing the job of a fiduciary. This means that even though your job title has not been listed in the plan document, if no one else has been named as a fiduciary or no one else has been delegated the responsibility, you could be found to be a fiduciary and held personally accountable if things go wrong. For example, if you are on your organization's 401(k) committee or investment committee, you can be found to be a fiduciary. Or, if you make decisions concerning whether a participant may take a hardship loan or you are responsible for ensuring contributions are made on time, you can find yourself named as a "functional" fiduciary.

Why do you care? Because the Department of Labor and the Internal Revenue Service care. These are the regulators of retirement plans, and they will most definitely find individual association staff accountable in the absence of clear guidance.

Don't let this happen at your organization. Protect yourself from the perils of unmanaged fiduciary risk by taking these steps:

1. Form a 401(k) Committee with a charter and all of the related appurtenances.

2. Name the fiduciaries of the plan in your plan document

(by job title). These include the trustee, the ERISA section 3(21) non-discretionary investment adviser, the ERISA section 3(38) discretionary investment manager, and the ERISA section 3(16) plan administrator.

3. Act solely in the interests of participants and beneficiaries (duty of loyalty, no conflicts).

4. Act for the exclusive purpose of providing benefits and defraying reasonable expenses.

5. Act in accordance with plan documents (if consistent with ERISA).

6. Have an investment policy statement which recognizes 404(c) regarding diversifying assets and follow the document.

7. Perform all duties with care, skill, prudence, and diligence of a prudent person acting in the same capacity and with same knowledge (focus on process).

8. Document, document, document. Process is more important than bad results.

Let's go back to number 2 for a moment. One of the best ways to protect yourself is to name a discretionary trustee. A discretionary trustee takes away from the rest of the fiduciaries the "exclusive authority and discretion to manage and control the assets of the plan." It's important to note that a "directed trustee" is not the same as a discretionary trustee. A directed trustee is only responsible for following proper directions delivered by a named fiduciary; they have a narrower role in the fiduciary control and management of the plan assets and hold co-fiduciary responsibility with the named fiduciaries. If your plan document does not name a trustee, then you will be on the hook unless you have taken the step of naming a discretionary trustee or, at least, a directed trustee.

In summary, it is impossible to totally shed all fiduciary responsibility, but you can successfully mitigate your fiduciary risk by having written documents, delegating responsibilities, and holding a regular 401(k) committee meeting where your process is documented on a regular basis.

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