What 401K Plan Sponsors Need to Know

With all the changes in the regulatory environment over the past several years, plan sponsors should understand their fiduciary role to avoid such pitfalls as getting audited, being sued by employees, or paying penalties for mismanaging their retirement plans.

To begin with, what is a fiduciary? The Department of Labor (DOL) which oversees 401(k) plan compliance has established the following fiduciary responsibilities:

- Acting solely in the interest of plan participants and their beneficiaries;
- Carrying out duties with skill, prudence and diligence;
- Following the plan documents;
- Diversifying plan investments;
- Paying reasonable administration expenses and investing the assets; and
- Avoiding conflicts of interest.

The plan sponsor is responsible for selecting investment providers and investment options as well as for monitoring performance.

Anyone involved in a 401(k) decision-making capacity and who has discretion over the retirement plan is subject to this fiduciary standard. They are personally liable if the Department of Labor (DOL) finds breaches in compliance.

To mitigate risks, plan sponsors can work with a 3(21) co-fiduciary or 3(38) investment fiduciary, typically a Registered Investment Advisor (RIA), bank or insurance company.

- A **3(21) Co-Fiduciary** shares fiduciary liability with the company, evaluating the investments held within the 401(k) and, where necessary, making recommendations for the replacement of funds based on such criteria as performance, cost and fit within the fund lineup. A 3(21) co-fiduciary is suited for plan sponsors comfortable with assuming investment fiduciary liability. The plan sponsor in effect manages the plan based on the co-fiduciary's recommendations.

- A **3(38) Investment Fiduciary** assumes most, but not all, of the investment fiduciary liability from the plan sponsor. The 3(38) performs the role of selecting, monitoring and, where necessary, replacing investments within the fund lineup – usually on a quarterly basis. The plan sponsor is notified of any changes made. A 3(38) is suited for plan sponsors who aren't comfortable with assuming responsibility for the plan's fund line up or don't have the time and interest to perform the required investment due diligence.

Because of the complexity of rules, compliance and plan management, the plan sponsor should work with an advisor to review the company's 401(k) plan on a regular basis to ensure it's up to standards. Doing so can help the plan sponsor avoid potential pitfalls.

Sources:

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