Employee Benefit Plans

ARE YOU A PLAN SPONSOR?

An employer's choice to provide various benefits to its employees by sponsoring an employee benefit plan can be a valuable decision providing incentives that contribute to the overall welfare of its employees and often times leading to increased employee satisfaction and retention. However, employers should be aware of the nature and complexities of their responsibilities when a plan is put in place.

There are literally thousands of employee benefit plans in existence sponsored by both large and small employers. Often times, larger employers operate in a more sophisticated environment with human resource and accounting departments overseeing the management and reporting of their employee benefit plan. However, small businesses generally do not have the structure, level of knowledge and resources available internally and often do not realize the fiduciary responsibilities they have related to their employee benefit plan. Further, fiduciary responsibilities span to service providers engaged by the plan sponsor in filling various roles related to the plan. Regardless of your company size or role in servicing the plan, plan fiduciaries are charged with overall responsibility of protecting the interests of employees, retirees, and others benefiting under the plan.

Employee benefit plans include various types of pension plans, including 401(k) and profit sharing plans, defined benefit plans, employee stock ownership plans and other health and welfare plans. Such plans must operate within the provisions and regulations set forth in the Employee Retirement Income Security Act of 1974 (ERISA) and are regulated heavily by various federal agencies, including the U.S. Department of Labor and Internal Revenue Service.

A fiduciary of the plan is an individual or entity involved in managing the plan and its related assets, and generally are those parties who exercise discretion or control over the plan's day-to-day operations. A fiduciary includes named trustees, investment custodians and advisors, those serving on administrative committees and others charged with oversight of the plan. Frequently, third-party service providers are engaged to handle certain administrative functions of the plan. In these situations, there can be a misconception on behalf of management that such third parties hold the primary

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responsibility when, in reality, a high level of fiduciary responsibility remains with the plan sponsor and its administrator to ensure that third parties engaged are qualified and to monitor their performance in fulfilling their roles in the administration of the plan.

A fiduciary's primary role is to act prudently on behalf of those benefiting under the plan. Other responsibilities include having a thorough understanding of the provisions of the plan document, ensuring the plan document complies with the provisions of ERISA, ensuring the plan operates within an investment policy that provides for a reasonable diversification of investment options, engaging qualified service providers, as necessary, and ensuring the costs of those services are fair and reasonable.

The plan sponsor and its related fiduciaries also have responsibility for meeting annual reporting and other compliance related matters. Reporting requirements generally include overseeing the completion of a Form 5500 filed annually with the Department of Labor and, depending on the size of the plan, engaging an outside auditor to audit the plan's financial statements. Generally, a plan having 100 or more eligible participants on the first day of the plan year is required to file audited financial statements along with the Form 5500. Further, there are requirements to have certain plans tested to ensure compliance with various nondiscrimination rules. Failures in nondiscrimination testing and not recognizing the audit requirement are among the most common problems we see.

Responsibility for the preparation of the plan's financial statements rests with the management of the Plan. Historically, many plan sponsors have relied on the expertise of outside parties, generally third-party administrators or plan auditors, for the preparation of the plan's financial statements. However, recent guidance has made clear that management must demonstrate its ability to prepare the plan's financial statements, and any inability to demonstrate this is a possible indication of a weakness in the plan's internal control environment.

It is important that those involved in a fiduciary capacity understand the responsibilities and liability that goes along with this role. Fiduciaries can be held personally liable for a breach of responsibility resulting from their actions or those of other fiduciaries to the plan (the U.S. Supreme Court recently ruled that participants can sue for losses). A fidelity bond can be purchased to provide insurance and mitigate the risk of loss should a breach of responsibility occur. For certain types of employee benefit plans, ERISA requires a minimum amount of fidelity bond coverage. If you are a plan sponsor, take this opportunity to self assess your awareness of who is serving your plan in a fiduciary capacity and ensure that they are aware of the responsibilities that go along with this role. Effectively operating and sponsoring an employee benefit plan certainly requires an understanding of the unique and complex nature of ERISA. But that, or fear of liability, should not deter you from providing your employees the opportunity to participate in benefit plans.

The regulatory bodies responsible for ERISA oversight recognize the need to provide increased education and promote awareness of fiduciary responsibilities. The U.S. Department of Labor offers many valuable tools via its website to assist plan sponsors in understanding fiduciary responsibilities. In addition, using highly reputable and active employee benefit advisors to hold yours and your employees' hands should help to minimize risks.

More information at www.bcdenver.com

Lynne Smith joined Bauerle and Company, P.C. in 2012 and brings over 25 years of public accounting experience. During her career, her primary area of focus has been providing audit and assurance services to both privately owned and publicly traded companies, with an emphasis in servicing employee benefit plans. Bauerle and Company, P.C. is a full service public accounting firm located in the Denver Tech Center and is one of Colorado's largest locally owned firms. You may contact Lynne at (303) 759-0089 or at lsmith@bcenver.com.

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