

Am I Fiduciary?

If you are asking the question then, most likely, yes.

Knowing whether or not you are a fiduciary is imperative because you could be held personally liable for your acts associated with administering the plan—whether your acts or decisions were made knowingly or unknowingly in violation of your fiduciary duties. Not knowing your responsibilities is not a defense.

A fiduciary is someone acting in a position of trust on behalf of, or for the benefit of, a third party. A fiduciary can either be named, in the Plan Document, or one by function/actions. If you work with the Plan, and have discretion, you are considered a Fiduciary.

ERISA broadly defines a retirement plan fiduciary as a person or entity that does any of the following with respect to a retirement plan:

- Exercises discretionary control or authority over the management of the plan or its assets
- Has discretionary responsibility in the administration of the plan
- Is specifically identified in the written plan documents as a fiduciary
- Provides investment advice or manages the plan assets for a fee

A Plan Fiduciary must:

1. Act in the best interest of employees
2. Know standards, laws, and trust provisions
3. Diversify assets to specific risk/return profile of client
4. Prepare investment policy statement and document due diligence
5. Use “prudent experts” (for example, an Investment Manager or Advisor)
6. Monitor the activities of “prudent experts”
7. Control and account for investment expenses
8. Avoid conflicts of interest and prohibited transactions

Knowing your fiduciary responsibilities is serious business. A fiduciary who does not follow the basic standards of conduct may be personally liable to restore any losses to the plan, or to restore any profits made through improper use of the plan’s assets resulting from their actions. Courts have found fiduciaries personally liable for acts that they did not know were within their fiduciary responsibilities. It is your duty you to know whether you are a fiduciary, and if so, what your responsibilities are. Acting in good faith or with good intentions is not a defense.
