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New 401k Reporting Rules Increase Personal Liability for Plan Trustees

Every year, businesses that sponsor an employee benefit or retirement plan must file a Form 5500. The Department of Labor has recently amended this form requiring more transparency as to the fees and charges paid to the plan's administrators. These changes require company sponsored retirement plans to provide compensation information for every service provider who received direct or indirect compensation in excess of \$5,000 during the plan year. After reviewing these fee structures and compensation paid to service providers, disgruntled employees may seek legal restitution against the fiduciaries responsible for making decisions relative to sponsored plans. Even without merit, the cost of defending frivolous lawsuits can have a severe economic impact on the company and individuals alike.

If you are a Fiduciary or Trustee in your company's pension, savings, profit sharing or employee benefit plan, you can be personally sued for a breach of your fiduciary duties. In many cases companies will set up certain committees to deal with the company sponsored retirement plan. Individuals who hold these positions are usually unaware of the fact that they are a *Fiduciary*. Without fiduciary liability coverage in place, these committee members are left unprotected from personal liability suits.

You may be thinking that the laws protecting corporations or commercial general liability policies will protect you individually, but that is not the case at all. The company's General Liability policy usually does not extend to protect against claims relating to Fiduciary Liability. Many fiduciaries think that since they have a broker or an investment advisor relating to the 401k, their insurance will step in and protect them in the event that they were to be sued for mismanagement of the plan. That is not the case at all. Fiduciaries can be held liable for the acts, errors and omissions of the outside entities providing the administration and services of the 401k or retirement plan.

Fiduciary Liability coverage will protect companies and individuals from these types of exposures. More recently, lawsuits involving negligence committed by board members and fiduciaries are on the rise. Would you want to sit on the committee charged with making changes to the retirement plan without having any safety net to protect yourself?

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