Duty of Prudence: The Expert Standard

This duty is perhaps the easiest to understand but the most difficult to implement. Here it is:

ERISA requires that a fiduciary manage a portfolio 'with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.'

The first thing to remember is that if you are a plan sponsor, member of a 401k committee or an officer or owner of a company with a 401k you are most likely a fiduciary. What does this rule really mean? Basically, it tells us that a fiduciary is not just a normal fiduciary but has an even higher standard. The standard is that you are presumed to be a "prudent expert". A prudent expert is a person that understands investments, 401ks, money management among many other things. In other words, you are expected to know as much as money managers, financial and investment managers with respect to 401ks and everything it takes to manage them.

For many of you, your participation in the management of your 401k is something you were asked to do and for others it is a requirement of the job. Most likely, you have a lot of other things to do during workday and find it difficult if not impossible to become a "prudent expert". But whether you like it or not you are.

Plan sponsors can do many things to manage this risk and they include, educating themselves and hiring experts to accomplish what you do not have the time or ability to do. By doing this, you may transfer some of your duties to another professional but in no case, can you transfer all your fiduciary duties to another.

Over the years we have seen plans that have competent financial advisors and others that don't and some that do not employ any help at all. Briefly, this is how you can determine whether you or your financial advisors are managing the plan as a prudent expert would:

- Do you have an Investment Policy Statement?
- Are the mutual funds in the plan diversified? How do you know?
- Are the mutual funds monitored on a quarterly basis?
- How do you know if the mutual funds are performing well and if they are investing in what they are supposed to?
- Are you presented, in written form, from an independent source, on a quarterly basis a due diligence report of your mutual funds?
- How do you know if the fees you are paying are excessive?
- Do you meet with your advisor every quarter or at least once per year?

- Do you have a 401k committee meeting at least once per year?
- Does your financial advisor have the ability to hold meetings with plan participants to educate them about the plan and the advantages of investing?
- Does your financial advisor bid the plan out to new providers every three to five years?

We would suggest if your advisors or you are not doing these things the plan could be the subject of an adverse audit or a participant complaint. If you have an advisor you should consider replacing him. These are just a few things that can help you manage plan correctly. If you have any questions, please call.

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