What Kind of "Fiduciary" Are They?

Multiple Employer Plan (MEP)

ERISA 3(38) Investment Manager

Co-Fiduciary

Fiduciary Warranty

When you're looking for relief from the personal liability and financial risks of being a 401(k) plan fiduciary, not all fiduciary protection is alike. You don't stop being a plan fiduciary just because a vendor signs on as a plan fiduciary or gives you a certificate!

Fiduciary Warranty: Warranties offer to pay court costs or claims if the fund menu is deemed not to meet certain minimum standards. They usually cover only a fraction of actual fiduciary exposure and often clearly state that the 401(k) provider is not a plan fiduciary. They provide "coverage" for violations that are very rarely contested.

Co-Fiduciary Services (ERISA 3(21)(a)): This term includes a wide array of fiduciary services ranging from a vendor that accepts minimal responsibility for the appropriateness of its funds to advisors or independent services that assist you with investment oversight. Co-fiduciary support can be helpful, but the plan sponsor is still liable and needs to follow sound fiduciary due diligence processes. This type of arrangement is little more than another target for litigation. It provides very little protection to the plan sponsor.

ERISA 3(38) Investment Manager: Through a written contract, the plan sponsor formally delegates all responsibility for selection, monitoring and replacement of the 401(k) plan's investment funds to an outside expert. This results in a significant transfer of investment fiduciary liabilities. The plan sponsor still retains all other plan fiduciary responsibilities, and also needs to monitor the qualifications and performance of the Investment Manager on an ongoing basis.

Multiple Employer Plans (MEP): Multiple Employer Plans have been called *"the platinum standard of fiduciary risk reduction"* since the MEP itself actually contracts with the service providers, not the adopting employer. The employer is no longer the plan trustee and has no responsibility for direct investment oversight. Properly structured, an MEP can also remove a large percentage of fiduciary liability when an ERISA 3(16) Plan Administrator is involved in the process. MEPs can eliminate the responsibility for the employer to file annual Form 5500's, oversee service providers, deal with document restatements, select and monitor investment funds, and much more! They are a terrific retirement plan solution for the smaller end of the 401k market.

This summary is not intended as legal or tax advice. Consult with your ERISA attorney for further information.