Funds, Fees, and Fiduciaries

Managing the Risks of Sponsoring a Retirement Plan

While each case is a different than another, there are a number of themes, or best practices, that emerge from a study of the lawsuits where plan sponsors prevailed.

Here are some of the lessons learned from those cases:

- Plan sponsors should establish plan committees and oversee their operations. The members of the committee should represent a cross-section of skills and interests. Committees should include members from finance and human resources, and should include at least some members with investment and financial knowledge.

- Plan committees should meet regularly, at least three to four times a year, and should have special meetings as needed. The meetings should have agendas and should allow enough time to fully investigate and discuss the issues.

- Plan committees should engage independent investment consultants with both investment expertise and experience with plans of similar types and sizes.

- Committee members should not rely blindly on the recommendations of their consultants, but instead should review their reports and require that the consultants be available to discuss their recommendations.

- Committees should work with their consultants to develop an investment policy statement (IPS) and should regularly review and apply the IPS as written. If a committee's investment approach changes, the IPS should be amended accordingly.

- Committees should pay particular attention to the fees and costs of the plan investments and service providers. Plaintiffs' attorneys regularly claim that plans pay excessive fees. Committees should regularly benchmark their fees and costs through benchmarking reports, RFPs, or other marketplace information.

- Committees should receive regular fiduciary training, at least once a year. As a part of that, the members should understand that they are fiduciaries and that fiduciaries must act in the best interest of the participants. New members should receive training at the inception of their service on the plan committee. As a part of that, they should meet with the investment consultant to go over the IPS in detail.

Note: None of those steps are required. The requirement is that fiduciaries know their responsibilities and then engage in a prudent process to perform those duties.