

10 Things Every 401(k) Plan Sponsor Should Be Doing To Stay On The Right Side Of ERISA

By Ary Rosenbaum, Esq.

When you sponsor a 401(k) plan, you're not just handing out a shiny benefit to help employees save for retirement. You're stepping into a role that carries legal weight, personal responsibility, and—if you're not careful—serious liability. I've been in this industry long enough to see well-meaning employers, HR professionals, and business owners step into the fiduciary firestorm with nothing but good intentions and a bad roadmap. That's a dangerous combination. Let me be clear: the Department of Labor isn't going to give you a gold star for trying hard. They care about whether you followed the rules, documented your decisions, and acted in the best interest of your participants. Period. The good news? You don't have to be a legal scholar or an ERISA geek to do this right. But you do have to take the job seriously. Here are ten things every plan sponsor should be doing to stay compliant, reduce liability, and avoid being the horror story I use at my next seminar.

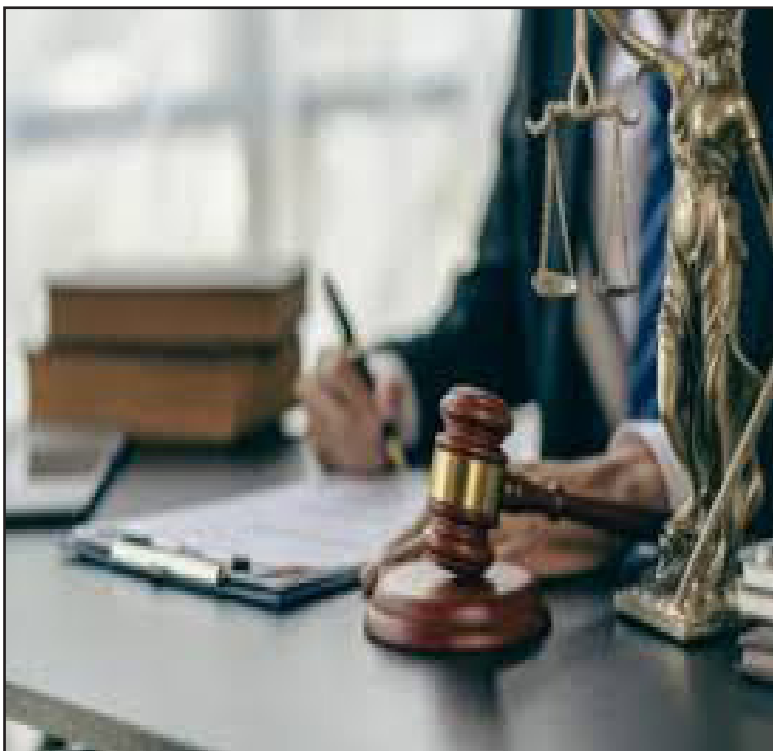
1. Embrace Your Fiduciary Role—Because You Can't Escape It

Let's start with the truth most vendors don't want you to hear: you can't outsource fiduciary responsibility. Sure, you can hire a third-party administrator (TPA), an investment advisor, a bundled provider, or even bring in an ERISA 3(38) fiduciary. That's smart. But none of it gets you off the hook. You're still responsible for hiring competent service providers, monitoring their performance, and acting in the best interest of plan participants. I've sat across from too many sponsors who thought they were pro-

tected because a salesperson used the word "fiduciary" in a pitch. It doesn't work that way. If you're signing the Form 5500, approving fees, or making plan decisions, guess what? You're a fiduciary. Own it.

2. Don't Fall for Shiny Objects and False Security

This one's personal. I've seen sponsors fall for fiduciary warranties, ERISA bonds, and liability policies that offer little more



than marketing fluff. There's a cottage industry out there selling peace of mind in a bottle, and most of it's snake oil. ERISA bonds are mandatory—but they protect the plan, not you. Fiduciary insurance? It's only as good as the policy language and your claim history. And fiduciary "warranties" from recordkeepers? Read the fine print. Most don't cover decisions you actually control—like investment selection or fee oversight. You need to do your homework. Insurance is a tool, not a strategy.

3. Keep Your House in Order—Documentation is Your Lifeline

Here's a truth I wish more people heard before a DOL audit: the problem isn't usually what you did—it's what you can't prove you did. Fiduciary liability lives and dies in the documentation. You need to document everything: investment decisions, committee meetings, fee benchmarking, service provider reviews. If you can't produce minutes, notes, or analysis, it's like it never happened. When the DOL or a plaintiff's attorney comes knocking, you don't want to be flipping through emails and hoping someone remembers a conversation from three years ago. You want a clean, complete file. That's not bureaucracy—it's protection.

4. Simplicity Is a Compliance Strategy

The retirement plan industry loves complexity. Why? Because complexity sells. But bells and whistles—stretch matches, Roth conversions, self-directed brokerage accounts—aren't inherently better. In fact, the more complicated your plan, the more likely you are to make a mistake. Keep It Simple, Stupid. It's not just a design principle—it's a compliance strategy.

Your plan should be functional, understandable, and easy to administer. If your plan design sounds like a sales brochure, it's probably a liability waiting to happen.

5. Vet Your TPA Like You Would Your Attorney

Not all TPAs are created equal. Some are real professionals—they know ERISA inside and out, they catch mistakes before they happen, and they make your life easier. Others? They're mill shops crank-

ing out volume, relying on templates, and missing critical details. When your TPA drops the ball, you get the letter from the IRS or DOL. That's why you need to vet them thoroughly. Ask for references. Find out if they've ever had a plan disqualified. Understand how they handle compliance testing, plan documents, and annual filings. A bad TPA doesn't just cost you money—they can cost you your peace of mind.

6. Make Regular Reviews a Non-Negotiable

Your 401(k) plan isn't a crockpot—you don't get to set it and forget it. Fees, investment performance, plan design, service providers—they all need to be reviewed regularly. At least once a year, sit down with your investment advisor and ask: Are these funds still appropriate? Are our fees reasonable? Is this plan still doing what we want it to do? Don't treat this as a box to check. Make it a real conversation. Ask questions. Take notes. Challenge assumptions. That's what a prudent fiduciary does.

7. Communicate Like It Matters—Because It Does

One of the most overlooked areas of fiduciary liability? Poor participant communication. If your employees don't understand the plan, they're more likely to make poor investment decisions. And if those decisions come back to bite them, they might come after you next. Provide clear enrollment materials. Use plain language. Make sure your recordkeeper's website is easy to navigate. And make sure someone—whether it's HR, your advisor, or the recordkeeper—can actually answer participant questions. If your participants are confused, that's not just a service issue. It's a liability.

8. Say No When You Have To

Being a fiduciary isn't about being popular. Participants will sometimes ask for things they're not entitled to—hardship withdrawals without documentation, early distributions that don't qualify, or plan



loans they don't meet the criteria for. You have to be the adult in the room. That means saying no—even when it's uncomfortable. Even when it's your top salesperson. Even when it feels easier to just approve it and move on. Fiduciary duty doesn't have a "go along to get along" clause.

9. Don't Lose Sight of the Mission

Your 401(k) plan is not a trophy. It's not a perk to pad a benefits package. It's a retirement plan. Every decision you make should serve that goal: helping your employees retire with dignity. That means pushing back on high-cost funds, resisting gimmicks, and constantly asking whether the plan is working for your people. If you're making decisions because they're easy, or because a vendor made a great pitch, you're off course. Re-center. Ask yourself: is this helping someone retire better?

10. Build a Team You Can Trust

This is where most sponsors go wrong. They treat the plan like a side project, something for HR to juggle between open enrollment and benefits fairs. But a good plan requires a good team: a capable TPA, a proactive advisor, a knowledgeable ERISA attorney, and ideally, an investment committee that actually meets. You wouldn't

run your company without financial professionals. Don't run your plan without fiduciary professionals. If the only voice you listen to is the one who sold you the plan, you're not running it—you're rolling the dice.

Final Thoughts: This Isn't About Fear—It's About Responsibility

Look, ERISA doesn't expect perfection. But it does expect prudence. It expects you to care, to act, to document, and to surround yourself with the right help. The sponsors who get hurt the worst are the ones who try to wing it or who assume that checking a few boxes is enough. Managing a 401(k) plan is seri-

ous work. But it's also a powerful opportunity. You have the chance to help your employees build real retirement security. That's not just compliance—it's leadership. And if you do it right? You won't just avoid liability. You'll build trust, loyalty, and maybe even a little dignity in an industry that doesn't hand it out easily.

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