Just Push Play: The Fiduciary Reality Check For 401(k) Plan Sponsors

By Ary Rosenbaum, Esq.

It was 2001 when Aerosmith dropped Just Push Play, and while it was no Rocks or Toys in the Attic, it packed a punch. That title track? A distorted, energetic anthem about dropping the hesitation and just going forward. No excuses, no delays, just push play. And while Steven Tyler probably wasn't thinking about fiduciary duties or the Department of Labor when he screamed, "Shut up and dance," I can't think of a better mantra for 401(k) plan sponsors today. If you're a plan sponsor, here's your reality: you're a fiduciary. You might not want to be. You might have been handed that title without understanding it. But it's yours. And being a fiduciary isn't something you half-commit to. This isn't some playlist you shuffle through. When you take on the responsibility of running a retirement plan, you either play it right or face the music. So, in the spirit of Just Push Play, let's talk about fiduciary duty. What it is. What it isn't. And how you, as a plan sponsor, can stop sitting on pause and start owning your role before your plan becomes a greatest hits compilation of "what not to do."

The Track List: Understanding Fiduciary Duty

Let's start with the basics. Under ERISA, the Employee Retirement Income Security Act, you're a fiduciary if you have discretionary authority or control over a retirement plan or its assets. That means if you're selecting investments, hiring service providers, or making administrative decisions, you've got fiduciary responsibility. The core duties? They're not complicated in theory, but too many sponsors tune them out:

- Duty of Loyalty – Act solely in the interest of plan participants and beneficiaries.
- Duty of Prudence – Make decisions with the care, skill, prudence, and diligence of a prudent expert.
- Duty to Diversify – Diversify investments to minimize the risk of large losses.
- Duty to Follow Plan Documents – Stick to the script, as long as it aligns with ERISA.

If that sounds like a lot, it is. But guess what? You signed up for it, explicitly or not. And no, you can't throw it back on your providers or pretend your TPA or recordkeeper is handling the hard stuff. They have their roles, but you, the plan sponsor, are the lead singer in this band. Own it.

Hitting the Wrong Note: Common Fiduciary Flubs

If I had a dollar for every plan sponsor who told me, "I thought our advisor was the fiduciary," I wouldn't need to bill hourly. That misunderstanding is the opening riff in a long song of bad decisions.

Let's break down the most common errors:

1. Set It and Forget It

Too many sponsors treat their plan like a CD they left in the car stereo. Once it's in, they don't think about it again. That might work for Pump or Permanent Vacation, but not for a retirement plan. You can't pick investments once and walk away. You need to monitor performance, fees, and services regularly. That's the fiduciary standard.

2. No Committee, No Minutes

Running a plan without a fiduciary committee is like going on tour without a road crew. You need structure. You need documentation. If there's no paper trail of meetings, decisions, and reviews, there's no defense if the DOL or a participant lawsuit comes knocking.

3. Overpaying Without Question

Fees matter. You don't need the cheapest plan on the market, but you do need to understand what you're paying and why. Are you benchmarking provider costs? Have you solicited bids? Or are you still locked into that plan your broker brother-in-law sold you in 2004?

4. Reliance on Salespeople

If your "advisor" is more interested in commissions than guidance, you've got a problem. Fiduciary advisors are legally obligated to act in your best interest. Brokers? Not necessarily. There's a difference between advice and sales, make sure you know which one you're getting.

Don't Be Cryin': How to Get It Right

Let's flip the record. You want to do this right? Then here's what pushing play as a fiduciary really looks like.

1. Establish a Fiduciary Process

This is your opening track. Set up a committee with defined roles. Meet regularly. Review investments, fees, and provider performance. Keep minutes. Make decisions thoughtfully and document the why. That's your defense if anyone ever accuses you of breach.

2. Hire Smart

Work with advisors who serve as fiduciaries in writing. Make sure your TPA understands compliance. Your recordkeeper should offer more than just a slick website. Don't be afraid to shop around. And don't assume that bigger means better, some of the worst fiduciary processes I've seen came from Fortune 500 plans that assumed their size exempted them from scrutiny.

3. Benchmark Everything

Fees. Funds. Services. Benchmark every few years. You don't need to replace providers constantly, but you do need to know that your plan is competitive and fair. That's what prudent fiduciaries do.

4. Educate Yourself

You don't need to be an ERISA attorney or an investment savant, but you do need to understand the basics. Read. Attend webinars. Ask questions. If you're not learning, you're not leading.

Toys in the Attic: The Hidden Liabilities Lurking in Your Plan

Some plans look fine on the surface. They have a decent fund lineup, recognizable provider names, and no complaints from employees. But just because you don't hear the screech of feedback doesn't mean everything's in tune. I've worked with plans where the investments hadn't been changed in a decade. Others had revenue-sharing structures that no one could explain. Still others outsourced everything to "consultants" who were AWOL when trouble hit. If your plan hasn't had a formal review in the last 24 months, you're overdue. If you haven't asked your providers about their fiduciary status, you need to. If you're not sure what your participants are paying in fees, it's time to find out. Silence doesn't mean satisfaction. Most participants don't complain until it's too late, and when they do, the lawsuits come fast.

The DOL's Greatest Hits Tour: Enforcement and Litigation

The Department of Labor isn't a passive listener. They're active. And they've been turning up the volume lately. Missing participant searches. Late deferral deposits. Failure to monitor providers. These are recurring hits on the DOL's playlist of enforcement. Then there's the class-action circuit. You've seen the headlines, lawsuits against giant plans with billion-dollar portfolios. But don't assume your $10 million plan is too small to matter. Plaintiffs' attorneys are now targeting plans of all sizes. If you're not actively managing the plan, you're a sitting duck.You don't want your name in that lawsuit Spotify playlist.

Walk This Way: The Road to Fiduciary Success

I didn't start off with an ERISA practice. I wasn't born reciting 408(b)(2). I built my practice because I saw the damage that a lack of fiduciary oversight could cause, from participants losing years of savings to sponsors getting blindsided by litigation. Being a fiduciary isn't about fear. It's about responsibility. It's about leadership. It's about understanding that the decisions you make affect real people, the ones who've trusted you with their retirement.And the beautiful part? This isn't complicated. You don't need to be a genius. You just need to be engaged. You need to be deliberate. You need to push play, stop making excuses, stop delaying decisions, and start acting like the fiduciary your participants need you to be.

Encore: Final Thoughts

So what's the takeaway here? If you're a plan sponsor, your fiduciary duties are not optional. They're not passive. And they're not something you can pawn off on someone else. You don't need to be perfect, but you do need a process. You need documentation. You need intention. Push play. Take action. Don't let your plan become a cautionary tale in the next DOL press release. Like Aerosmith said, "You ain't seen nothin' 'til you're down on a muffin." I'm still not sure what that means, but I do know this: if you don't get serious about your fiduciary duties, you're going to be crying, just not to a power ballad. And if you need help? That's what folks like me are here for. Turn up the volume. Step up your game. Just push play.

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