



Retirement Plans and Your Fiduciary Duty

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Are the fiduciaries for your retirement plan paying close attention to their ERISA fiduciary duties? It has become more common for retirement plan participants, including disgruntled ex-employees, to sue their retirement plan's fiduciaries for poor investment choices or lack of proper and required oversight.

In a recent court case (*Tibble v. Edison Int'l*), participants in this class action suit claimed that the fiduciaries of their employer's 401(k) plan breached ERISA's fiduciary duty of prudence by investing in the retail share class of a mutual fund when the same investment had an institutional share class. The court agreed.

As background, certain mutual funds offer both retail and institutional share classes. The institutional share class usually requires a minimum investment and is available only to institutional investors, such as 401(k) plans, and has lower fees than retail shares.

The court noted that there was no evidence that the fiduciaries even considered or evaluated the different share classes, and rejected the fiduciaries' argument that their selection process was reasonable because they relied on the advice of a third-party investment advisor. The court found that simple reliance on this investment advisor's fund review was not evidence of prudence, and also found that the plan was large enough that it likely could have obtained a waiver of the fund's minimum investment requirement, though the fiduciaries apparently did not make such a request.

In this case, damages from the decision to invest in retail share classes will be calculated to include both the higher fees paid and the lost investment opportunity, since lower fees would have allowed participants to have more money invested and they would have earned more over time.

Comment: In this court case, the fiduciaries failed to fully evaluate the fund classes, but there are many ways to breach fiduciary duties. The Department of Labor tells us that fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of retirement plan participants and their beneficiaries. These responsibilities include:

- Acting solely in the interest of plan participants and their beneficiaries;
- Carrying out their duties prudently;
- Following the plan documents (unless inconsistent with ERISA);
- Diversifying plan investments; and
- Paying only reasonable plan expenses.

Note that these important fiduciary duties apply not only to 401(k) plans but now to 403(b) plans as well. Retirement plan fiduciaries have many responsibilities. Unfortunately, many fiduciaries do not know what they are.

It would be truly unfortunate if your employees, or perhaps a disgruntled ex-employee, made a legitimate and preventable claim against your organization and personally against your retirement plan's fiduciaries. If you have not paid close attention to your retirement plan in some time, your plan may be in need of an important review.

SIG would be happy to help you with this. If you have any questions or concerns regarding your retirement plan or the duties your fiduciaries are required to perform, please feel free to call your Account Manager, send an email to Questions@SIGinsures.com, or call the Benefits Helpline at 206-957-7066 (toll-free 800-946-7066). If you would like to read more about fiduciary duties, see <http://www.dol.gov/ebsa/pdf/fiduciaryresponsibility.pdf>.