



HELPING BENEFIT PLAN SPONSORS PUT INFORMATION INTO ACTION

Are You A Fiduciary?

By Robert C. Lawton, AIF, CRPS, President, [Lawton Retirement Plan Consultants, LLC](#)

Our clients often ask us to define who in their organizations are fiduciaries to their retirement plans and exactly what it means to be a fiduciary. Many times, our clients are surprised by the answers that they get. You may be as well.

Are you a fiduciary to your company's retirement plan if you sit on the Investment Committee?

The answer here is almost always yes. The only exception would be someone who attends the Investment Committee meetings in a note-taking capacity only. Members of Investment Committees generally have discretion in administering and managing the plan or controlling the plans assets. If you make plan administrative or management decisions, or provide actionable input, you are probably a fiduciary.

If your boss has directed you to sit on your company's Investment Committee (even if you don't want to) does that make you a fiduciary? What about your boss, is he/she a fiduciary?

The short answers are yes and yes. Even though you may not know anything about retirement plans, and even if your job has nothing to do with anything financial or employee benefit oriented, if your boss appoints you to the Investment Committee, you are a fiduciary to your company's retirement plan. However, and here is where your boss may be surprised, so is he/she. Why, because your boss has the authority to appoint someone to the Committee. Your boss may think that by appointing you to the Investment Committee that allows him/her to step away from being a fiduciary. Unfortunately (for your boss) that is not the case.

Can't we just hire someone to be a fiduciary to our plans? Then none of us at our company will have to be fiduciaries, right?

You can absolutely hire someone to be a co-fiduciary with you on your plans. However, that does not mean that the plan sponsor (you) are no longer a fiduciary. You cannot off-load your fiduciary responsibility as a plan sponsor, but you can seat more people in the fiduciary boat with you. Also keep in mind that as the plan sponsor you have the duty to monitor the fiduciaries you hire.

What happens if I make a mistake as a fiduciary?

You can be held personally liable (insurance protection may be purchased) for fiduciary breaches in areas that you have decision-making authority.

After reading all of this I am resigning today from the Investment Committee. I am done being a fiduciary immediately upon my resignation, right?

Nope. Not until you are replaced. You cannot escape your fiduciary responsibility by trying to run and hide! If you resign and don't attend meetings, or if you just decide not to attend any more meetings, you still remain a fiduciary until you are replaced.

Ok, I'm stuck. Now understand that I am a fiduciary, what does that mean?

The Department of Labor says that the primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act prudently and must diversify the plan's investments in order to minimize the risk of large losses. In addition, they must follow the terms of plan documents to the extent that the plan terms are consistent with ERISA. They also must avoid conflicts of interest.

And the English translation is:

The decisions that you are involved in making at Investment Committee meetings must benefit the participants of the retirement plan only and not your employer, committee members or someone else. As a fiduciary you must act prudently (cautiously and with a well documented line of reasoning) when considering your retirement plans investments. You must follow the plan document for your retirement plan, which outlines how your plan works. Finally, you need to avoid conflicts of interest, many of which may involve the providers you hire or the investments you select.

Do your responsibilities still seem a bit foggy? Consider the following list of the top ten mistakes plan sponsors make regarding fiduciary responsibility, according to a recent *PLANADVISER* survey:

Top 10 Mistakes Plan Sponsors Make Relative to Fiduciary Responsibility

1. Not having an Investment Committee.
2. Not having Investment Committee meetings.
3. Not keeping minutes of Investment Committee meetings.
4. Not having an Investment Policy Statement.
5. Not removing bad funds from a retirement plan.
6. Not complying with section 404(c).
7. Not depositing contributions on a timely basis.
8. Not monitoring providers on a regular basis.
9. Not following the terms of the plan document.
10. Not realizing who is a fiduciary – what that means.

The good news is that there is a lot of help out there. There are many qualified attorneys, investment advisors and consultants who can help you comply with your fiduciary responsibilities.

About the Author

Robert C. Lawton, AIF, CRPS is the founder and President of Lawton Retirement Plan Consultants, LLC. Mr. Lawton is an award-winning 401(k) investment adviser with over 30 years of experience. He has consulted with many Fortune 500 companies, including: Aon Hewitt, Apple, AT&T, First Interstate Bank, Florida Power & Light, General Dynamics, Houghton Mifflin Harcourt, IBM, John Deere, Mazda Motor Corporation, Northwestern Mutual, Northern Trust Company, Trek Bikes, Tribune Company, Underwriters Labs and many others. Mr. Lawton may be contacted at (414) 828-4015 or bob@lawtonrpc.com.

About Lawton Retirement Plan Consultants, LLC

Lawton Retirement Plan Consultants, LLC is a Milwaukee, Wisconsin-based independent, objective Registered Investment Adviser (RIA) providing investment advisory, fiduciary compliance, employee education, provider management and plan design services to 401(k) plan sponsors. The firm currently has contracts in place to provide consulting services on more than \$400 million in plan assets. For more information, please contact Robert C. Lawton at (414) 828-4015 or bob@lawtonrpc.com or visit the firm's website at: <http://www.lawtonrpc.com>. Lawton Retirement Plan Consultants, LLC is a Wisconsin Registered Investment Adviser.

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