

ASK SAVA:

Q: "We have a retirement plan for ourselves and employees. I was told by our administrator that I need to have a Fiduciary bond? I thought I already had "employee theft/crime coverage" why the need for bonding?" W.C., New Haven, CT

A: Your administrator is correct. Under the Employee Retirement Income Security Act of 1974 (ERISA), fiduciaries—that is, any employee who has discretionary authority over a plan or who assists in its administration—can be held personally liable for losses to a benefit plan incurred as a result of their alleged errors, omissions, or breach of their fiduciary duties. The (client) can help mitigate the personal liability of its fiduciaries by following the advice of outside experts and by selecting diverse, financially sound investments. But it cannot entirely eliminate their personal liability.

Moreover, designated fiduciaries may not be the only targets of such lawsuits; targets can also include the employer or the plan itself. Suits can be brought by plan participants, participants' legal estates, the Department of Labor, and the Pension Benefit Guaranty Corporation alleging:

- Improper advice or disclosure.
- Inappropriate selection of advisors or service providers.
- Imprudent investments.
- Breach of responsibilities or fiduciary duties imposed by ERISA.
- Conflict of interest with regard to investments.
- Lack of investment diversity.
- Negligence in the administration of a plan.

The law that governs this type of plan is actually extremely broad in the scope of what could possibly result in a lawsuit against the individual, and actually prevents the company from protecting or indemnifying the person against such claims. We have found that the coverage is quite inexpensive and the information needed in order to secure a firm quote is quickly gathered.

In the case of *Barker v. American Mobil Power Corporation*, the court held an individual to be personally liable for losses to a plan, and stated, "*While we are not unsympathetic to his burden, we note that fiduciaries may be insured for this type of liability. It would appear that prudent fiduciaries would have their plan or employers secure such insurance.*"

The Fiduciary bond that is required by ERISA, specifically handles theft issues from a plan. If a separate Fidelity bond is secured exclusively for ERISA, it would usually be in the actual name of the plan and would not cover any other type of theft by an employee. Those are often very inexpensive and can be written for a one to three-year term. It is fine to write the bond for only the amount necessary to satisfy ERISA (10% of the fund balance to a maximum of \$500,000), but the plan should be aware that they could suffer losses greater than that limit.

By purchasing Blanket Employee Dishonesty or Employee Theft Crime, the insured is covered from Employee Theft of funds from the business and not just what is in the plan. Employee Theft Crime coverages can certainly include ERISA Fiduciary bond compliance, although it is important to distinguish between the need to satisfy ERISA (which

would be a maximum limit of \$500,000) and what the potential loss would be if an employee did manage to embezzle funds or steal from the insured or plan somehow. Many people only consider ERISA compliance, and in the event of a loss they are far too little coverage to actually make themselves or the plan whole again. Statistically speaking, this type of crime is often happening for months or even years before discovered, and the money is usually long gone. This makes restitution unlikely.

Combining the Crime with ERISA Fiduciary bond may save your client some money, but I wouldn't necessarily count on too great a savings. Many of these modular policies have minimum premiums for each line of business (such as the Crime, Employment Practices, Fiduciary, etc.). That being said, I do find that the companies work their hardest for lower rates when there are a few parts being quoted at once.

In terms of Fiduciary Liability, there is a definite difference between the Employee Theft Crime Insurance that will protect the organization from fraud and embezzlement (which would pay to restore what was stolen), and the Fiduciary Liability coverage, all together separate, is designed to protect any trustees or fiduciaries who can be personally sued for alleged errors, omissions or breaches of their fiduciary duties of a plan. As you can see, the ERISA law does impose some requirements/protections on you but there are additional coverages that should be considered any time there is a retirement plan in place.

For additional information, you can contact us directly with your questions at 860-437-7282 x22 or mjacobik@savainsurance.com

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