Insurance and Bonds for Benefit and Retirement Plan Exposures

Fiduciary Liability, Employee Benefits Liability and ERISA Bonds

This material is provided for informational purposes only, and should not be considered legal advice or an actual contract for insurance. Before taking any action that could have legal or other important consequences, confer with a qualified professional who can provide guidance that considers your unique circumstances.

Employee Benefit and Retirement Plans are not commonly thought of as business liability exposures for a company. Unfortunately past and present employees known as 'plan participants' can file claims against the company plan; or worse, company individuals who may be personally liable for their discretionary authority over the Retirement Plan if either are not compliant with the Employee Retirement Income Security Act (ERISA). Fiduciary Liability, Employee Benefits Liability, and ERISA Fidelity Bonds are insurance policies and bonds which provide protection for employee plans with each serving a different purpose.

Employee Benefit and Retirement Plans may be subject to the ERISA law passed in 1974. ERISA is federal law that sets standards of protection for individuals in most voluntarily established, private-sector benefit and retirement plans. Under ERISA, employee benefit and retirement plans fall into two categories: Welfare and Pension Plans.

- Welfare (Benefit) Plan Examples: Group life, health, disability, dental and more. They can also extend to more fringe benefits like day care or legal services, provided these benefits are offered to all employees.
- Pension (Retirement) Plan Examples: Pensions, 401(k), Employee Stock Ownership Plans (ESOP), Roth IRA and profit sharing are among the more popular plans.

HOW DO INSURANCE AND BONDS COVER THESE PLANS?

- Fiduciary Liability insurance fundamentally responds to claims made against employers, employee plans, board members and employees for **breaches of fiduciary duty** with respect to ERISA obligations, including allegations of imprudent investment of plan assets, excessive fees paid to service providers, non-compliance with plan documents and false and misleading statements to plan participants.

  Who is considered a Fiduciary? Under ERISA law, fiduciaries can be anyone involved in administration, management or the decision process of an employee benefit plan. Fiduciaries are subject to strict standards of conduct, including a duty to act prudently and solely in the interest of plan participants and their beneficiaries. As a result, fiduciaries can be personally liable for a breach of their duties.
- Employee Benefits Liability can be purchased as an additional coverage via an endorsement to a commercial general liability base policy. Coverage protects the organization from claims resulting from errors and omissions that arise from the **administration** of employee benefit and retirement plans.
- An ERISA Fidelity Bond is required under ERISA law. Commonly referred to as an 'ERISA Bond', this financial instrument effectively responds to the loss of assets of a qualified plan arising from **employee dishonesty.** The amount of coverage required is 10% of plan assets, subject to a maximum amount per plan of $500,000, unless a plan includes employer securities or the company elects to purchase higher limits than required. The bond covers theft of plan assets by plan administrators (typically employees of the company) or any third party providers engaged in managing the plan. This is not liability coverage and therefore fiduciary or employee benefits liability insurance should be considered to respond to liability claims.

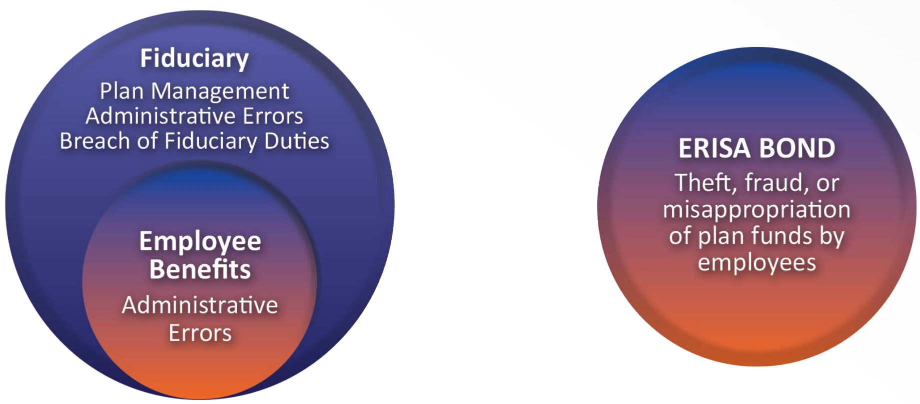
THE ERISA BOND IS REQUIRED; BUT DO I NEED ONE OR BOTH OF THE OTHER INSURANCE COVERAGES?

Employee Benefits Liability is fairly simplistic insurance coverage intended for administrative errors only and most endorsements exclude claims arising out of the obligations of the federal ERISA law; a major potential coverage gap. Conversely, most Fiduciary Liability policies have a broad definition of 'wrongful act' which addresses claims for breach of fiduciary duty imposed by ERISA, as well as, administrative errors or omissions covered under Employee Benefits Liability coverage. At a minimum, a company should maintain Employee Benefits Liability, but if there are significant plan assets, a company should consider purchasing a Fiduciary Liability policy.

INSURANCE FOR BENEFIT AND RETIREMENT PLANS

LIABILITY COVERAGES

CRIME/FIDELITY COVERAGES



WE HAVE A THIRD PARTY ADMINISTRATOR. DO WE STILL HAVE PERSONAL LIABILITY?

Plan fiduciaries cannot transfer their responsibility or personal liability to another party like a third party administrator (TPA), insurance company or professional investment firm. Risk management steps can be taken to reduce personal liability, such as hiring a competent team of experts, but companies and their fiduciaries still maintain independent responsibilities within their organization in the administration and management of benefit and retirement plans. Furthermore, plan participants may be unaware of the roles and responsibilities of external consultants; therefore, are more likely to pursue a claim directly against their employer or sponsor organization in the event of a claim.

ABOUT DEALEY, RENTON & ASSOCIATES

We are pleased to provide this primer about insurance and bonds for benefit and retirement plan exposures. We strongly recommended that a company have substantive discussions with their insurance broker about their risk exposures when making purchasing decisions.

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