What Is Fiduciary Liability Insurance and Why Do You Need It?

Not knowing the answer could cost you everything.

CHUBB®

Fiduciary Liability Insurance Policies (FLIPs) are arguably one of the least understood insurance products on the market. However, it may be the only coverage that adequately protects people against liability for managing or administering an employee benefit plan - from top corporate executives that hire investment managers to payroll clerks that process enrollment forms. With the rising frequency of expensive and time consuming litigation and regulatory efforts in today's evolving legal environment, employers and plan fiduciaries are increasingly being held accountable for their actions (or failure to act) with respect to employee benefit plans. Thus, FLIPs are an important part of any comprehensive risk management program.

Who is Considered a Fiduciary?

Any individual included in the plan document by name or title, along with anyone who has discretionary decision-making authority over the administration or management of a plan or its assets may be considered a fiduciary under ERISA. Fiduciaries commonly include the plan sponsor (which is typically the employer), the plan trustee and the plan administrator, directors and officers (including when they appoint other fiduciaries or retain third party service providers) and internal investment committees.

What is Considered to be a Plan?

Employee benefit plans fall into two broad categories - retirement plans and welfare plans. Retirement plans include a wide gamut of plans, including but not limited to defined benefit pension plans, profit sharing or savings plans such as 401(k)s, 403(b) plans, stock purchase plans, and employee stock ownership plans (ESOPs). Welfare Plans include medical, dental, life and disability plans.

Why Your Company Needs Fiduciary Liability Insurance

FLIPs protect plan fiduciaries against claims alleging that they mismanaged an employee benefit plan or plan assets. This includes, but is not limited to, making bad investment decisions, negligently handling plan records, and negligently selecting plan service providers. In addition to being an effective risk transfer tool for companies, FLIPs are a vital means of protecting fiduciaries' personal assets for the following reasons:

- The Employee Retirement Income Security Act of 1974 ("ERISA") imposes the "highest duty known to law" on employee benefit plan fiduciaries, which is arguably even higher than the standard of care placed on corporate directors and officers.
- ERISA Section 409 expressly imposes personal liability on plan fiduciaries who breach their fiduciary duties. This means that fiduciaries might have to personally pay for any losses they cause out of their own private assets.
- ERISA prohibits plans from indemnifying plan fiduciaries, which means plans cannot pay defense costs, settlements or awards on behalf of fiduciaries that have breached their fiduciary duties.
- Even if your company wishes to indemnify its fiduciaries, it may not be financially capable of doing so, or it may be barred by law from doing so.

The equation is simple: Highest duty known to law + Personal Liability + Legal and/or Financial Inability to Indemnify = Exposure of personal assets

- To compound matters, ERISA casts a wide net of liability that ensnares people by deeming them to be fiduciaries based on their conduct (i.e. functional fiduciaries), even though they are not named fiduciaries. This means you could be a plan fiduciary and not even know it.
- FLIPs are the only insurance that offers broad protection against fiduciary exposure. ERISA bonds, D&O insurance and Employee Benefits Liability coverage(offered under traditional general liability policies) are inadequate and provide little to no ERISA liability coverage, or exclude it altogether.
- By law, fiduciaries cannot escape their fiduciary duties by delegating them to third party service providers. Fiduciaries retain the duty to prudently select and monitor these service providers.

As a result, a fiduciary's personal assets may be exposed–unless they carry Fiduciary Liability Insurance.

Chubb's Superior Coverage

Chubb's Fiduciary Liability Insurance policies provide some of the broadest coverage and most favorable terms in the market:

- Coverage for all employee benefit plans sponsored by the company for its employees, including plans that aren't subject to ERISA
- Coverage for virtually all of the company's constituents, including the company and its employee benefit plans, directors and officers, and employees, and members of the company's employee benefit committees , administrative committees, and

investment management committees
- Multiple insuring clauses available for a variety of matters, including written demands, civil or criminal suits, regulatory proceedings and government investigations
- Some of the broadest inquiry coverage available on the market, including potential coverage for Interviews conducted by an the U.S. Securities and Exchange Commission (SEC)
- Coverage for voluntary settlement programs administered by the Internal Revenue Service (IRS), Department of Labor (DOL), Pension Benefit Guaranty Corporation (PBGC) or any similar program administered by a government body located outside of the United States
- Responsive to a broad array of allegations including but not limited to:
  - Wrongful denial of or improper change in benefits
  - Improper enrollment or advice
  - Fiduciaries engaging in a prohibited transaction and other conflicts of interest
  - Failure to administer the plan according to plan documents
  - Imprudent investment of assets or lack of investment diversity
  - Imprudent selection of and failure to monitor third-party service providers
  - Flexible defense arrangements under which Chubb provides a defense using expert legal counsel with extensive experience in ERISA litigation
  - Coverage for punitive damages and certain fines and penalties, including but not limited to civil penalties under 502(c), 502(i), 502(l), the Pension Protection Act (PPA), Health Insurance Portability and Accountability Act (HIPAA), and the Affordable Care Act (ACA), were applicable and where permitted by law
  - Enhanced reporting provisions when renewed with Chubb

Why Chubb?

Solid financial stability, a long tradition of unparalleled fiduciary expertise, top-rated claims service, and access to global solutions are but a few of the reasons to partner with Chubb to provide fiduciary protection.

- A promise to pay is only as good as your Insurer's ability to pay. Chubb's financial stability and ability to pay claims consistently rank among the best in the insurance industry. For more than 75 years, Chubb has maintained A.M. Best Company's highest ratings – making Chubb an easy and wise choice.
- Since 1975, Chubb has pioneered and honed fiduciary protection, becoming one of the leading fiduciary liability carriers in the world. Our depth of understanding the duties and legal exposures of fiduciaries, as well as complicated plan structures, allows us to provide bold, insightful coverage that stands out in the market.
- When you buy insurance, you're buying peace of mind, and that's what you get with Chubb. Chubb is renowned in the industry for unparalleled claims service with fair, prompt claims handling.
- Our worldwide expertise and local presence combines the best of both worlds, enabling us to solve complex global protection problems while being mindful of local needs and relationships.
- Additional fiduciary educational support (complete with Fiduciary FAQs and Loss Scenarios) is available at Chubb.com. Also, view "A Chubb Special Report: Who May Sue You and Why: How to Reduce Your ERISA Risks and the Role of Fiduciary Liability Insurance" for an in-depth analysis of fiduciary exposures and coverages.

The Myth of Coverage under ERISA Bonds and EBL Insurance

The Fiduciary Liability Insurance Policy (FLIP) is designed to protect fiduciaries against breach of fiduciary duty claims and more. It is the only type of insurance that does so. Contrary to popular belief, ERISA bonds and employee benefits liability (EBL) coverages do not fully cover fiduciary exposures.

- ERISA bonds, which are required under Section 412(a) of ERISA, differ from fiduciary liability coverage. ERISA bonds provide first party coverage that is designed to protect the plan and its participants by ensuring that any employee who handles funds or other property of the plan are bonded. This protects the plan from risk of loss due to fraud or dishonesty on the part of the bonded individuals.
- EBL coverage, which is provided via an endorsement to a general liability policy, also provides limited protection. It covers errors in plan administration only (e.g. failure to enroll or improper eligibility advice), and not breaches of fiduciary duty (e.g. imprudent investment, negligent selection of service providers, etc.). Moreover, EBL coverage for errors in administration is often more restrictive than the errors in administration coverage afforded under FLIP.

Contact Us

For more information on Fiduciary Liability solutions, contact your local agent or broker, or visit us at www.chubb.com/us/fiduciaryliability.

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