

# Fiduciary Duties Under ERISA: What Plan Sponsors Should Know

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Recent health plan fee litigation has shed light on the importance of understanding what it means to be a fiduciary and how plan sponsors can fulfill their fiduciary obligations to group health plans. The primary cases, *Lewandowski v. Johnson & Johnson* and *Navarro v. Wells Fargo et. al.*, are both employee-initiated challenges, alleging their employers' mismanagement of prescription drug plans. The lawsuits argue that the employers breached their fiduciary duties by paying inflated costs for certain generic specialty medications, which may have resulted in increased costs for plan participants and beneficiaries.

While these cases vary in terms of specific facts and the ultimate legal outcomes remain uncertain, they serve as a valuable reminder for plan sponsors to review their plan governance procedures and ensure appropriate plan administration.

The Employee Retirement Income Security Act (ERISA) sets basic standards of conduct for those who manage employee benefit plans and plan assets. ERISA's protections apply only to private-sector group health plans. The law does not cover public sector or church-sponsored plans.

## Who is an ERISA fiduciary?

AN ERISA FIDUCIARY IS AN INDIVIDUAL WHO EXERCISES DISCRETIONARY AUTHORITY OVER PLAN ADMINISTRATION OR PLAN ASSETS.

Fiduciary status is based on the functions actually performed for the plan, not just a person's job title or assigned duties. Plan fiduciaries may include the "named fiduciary" in the plan document, plan administrators, trustees and the benefits selection committee.

Fiduciaries can hire third-party service providers to handle certain fiduciary functions. Contractual agreements allow providers to assume limited liability for the selected fiduciary function. For example, it is common for pharmacy benefit managers (PBMs) to accept limited fiduciary responsibility for the purpose of adjudicating claims and processing appeals for prescription drug benefit plans.

## What duties are owed to plan participants?

ERISA imposes specific duties of fiduciaries that are owed to plan participants and beneficiaries. When making decisions, ERISA fiduciaries are required to act with:

- **Loyalty** – must act solely in the interest of plan participants and their beneficiaries
- **Prudence** – must carry out their duties with the care, skill and diligence of a prudent person
- **Plan conformity** – must act in accordance with the plan's documents, unless inconsistent with ERISA
- **Reasonability** – must pay only reasonable plan expenses

THE FOUNDATION OF FIDUCIARY DUTIES UNDER ERISA IS WELL-INFORMED, SOUND DECISION MAKING.

Notably, ERISA fiduciary responsibilities do not require that plans always choose the lowest cost option available or minimize plan expenses entirely; the fiduciary must administer the plan using reasonable decision-making processes to benefit plan participants and beneficiaries. There are many unique considerations that each plan sponsor may consider when designing and administering a benefits plan in furtherance of plan participants' and beneficiaries' best interests.

It is important to note that some actions undertaken by plan fiduciaries are not fiduciary decisions. Settlor functions are decisions that relate to the formation, design or termination of ERISA plans. These types of decisions include changing employee contribution levels or eligibility rules, amending a plan or changing plan design and terminating all or part of a plan. This is an important distinction because many benefits professionals are confronted with the dual role of carrying out fiduciary responsibilities for the sole benefit of participants and beneficiaries and making business decisions about the benefits plan on behalf of the employer.

## What are plan assets?

A plan's specific funding mechanism may also impact how the funds are treated under ERISA. Some health benefit plans are funded via a voluntary employees' beneficiary association (VEBA), a tax-exempt trust established by the employer to pay for employee benefits like health care. Assets in a VEBA trust are plan assets, whereas, when plan benefits are paid entirely from an employer's general assets, those amounts are not plan assets. This may prove to be an important distinction in current and future litigation.





## Health plan fiduciary tips

To help fulfill fiduciary responsibilities and demonstrate an effective decision-making process, consider these best practices when managing your plan.

- Develop a sound process for selection and regular evaluation of vendors and plan service providers
- Engage an independent consultant
- Document the vendor selection process
- Engage in ongoing monitoring of plan service providers
- Analyze plan costs and seek to understand any impact on plan participants.
- Ensure required plan documents are complete, readily available and comply with ERISA's requirements
- Develop a compliance plan to keep track of required reporting and disclosure requirements
- Provide new and continuing education and training for decision makers and benefits administrators to help them understand the scope of fiduciary duties

- Keep records of meetings where plan decisions were made and include the rationale for those decisions
- Maintain a file that documents any other steps taken to meet fiduciary duties

Employers Health will continue to monitor changes in these health care fee litigation cases and update our library of resources accordingly. Regardless of any substantive legal developments, employers should continue to prioritize plan governance and engage in prudent decision-making processes.

### TO LEARN MORE CONTACT

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