ERISA Bonds and Fiduciary Liability

All plans are required to hold an ERISA or fidelity bond. Every plan official who handles plan funds or other property of the plan must be adequately bonded against loss by reason of acts of fraud or dishonesty. This type of bond is not the same as fiduciary liability insurance. Fiduciary liability insurance generally insures a fiduciary for breaches of fiduciary duties. An ERISA bond should cover any person who handles the funds, regardless of their status as a fiduciary.

The ERISA bond must protect the plan against loss by reasons of acts of fraud or dishonesty on the part of the person required to be bonded (plan officials). Fraud or dishonesty includes risks of loss that might arise through dishonest or fraudulent acts such as larceny, theft, embezzlement, forgery, or misappropriation of funds when handing plan funds. A plan official is a person who "handles" the funds or property of the plan and may include the plan administrator, officers and employees of the plan sponsor, and other persons such as service providers who have access to the funds of the plan.

Is your plan required to have an ERISA bond? Yes!

ERISA bonds are required to be purchased to protect the plan assets

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The amount of the bond must be fixed at the beginning of each plan year and must be an amount that is not less than 10% of the amount of funds in the plan. The amount of the bond may not be less than $1,000 (even if 10% of the plan assets are less than $1,000) and the amount need not be greater than $500,000 (even if 10% of the plan assets exceed this number). The bond does not have to state a specific dollar amount of coverage, so long as the bond provides the required amount per plan and per plan official. Often, a blanket bond can be purchased that covers all person who handle funds. If a plan holds non-qualifying assets or employer securities, the minimum amount of the bond will increase.

The plan can purchase the bond from plan assets since the bond protects the plan and it does not benefit any plan official. Typically, the plan is named as the insured and a surety company provides the bond. The plan must be named so that the plan's representatives could make a claim under the bond in the event of a covered loss to the plan. The term of the bond must be for at least one year and if it is for multiple years, it should have a clause that allows the coverage to automatically increase as the plan assets increase. The ERISA bond may not have a deductible. The bond may cover more than one plan as long as the recovery amount for each plan is at least equal to the amount that would have been required if separate bonds were purchased. An ERISA bond is a requirement for most plans, but there is no penalty for not complying. The amount of the bond is reported on the annual Form 5500 report, so it is feasible that not having a bond or the proper amount of the bond may trigger an IRS plan audit.

Separate from an ERISA bond (which protects the plan) is fiduciary liability insurance. This insurance must be purchased by the fiduciary and will protect the fiduciary from a breach of fiduciary duties. Fiduciaries who breach their duties may be personally liable to make the plan whole for any losses caused by their breach, including lost opportunity and litigation costs. Fiduciary duties include many items, including making high-quality, prudent decisions and documenting the decisions made in that process.

An ERISA bond and fiduciary liability insurance can be obtained from most insurance agents. Our website offers a link for purchasing this insurance as well. ERISA bond coverage is quite affordable. Premiums for a $1,000 bond would typically cost around $100 per year. Premiums for a $100,000 bond would typically cost around $200 per year. A bond for $500,000 would cost around $400 per year. The cost may be reduced if multiple years are purchased at one time. Depending on the amount of coverage, the amount of the plan assets and the number of fiduciaries covered, premiums for fiduciary liability insurance can run anywhere from $200 per year to several thousand dollars per year.