masuda funai

News & Types: Employment, Labor & Benefits Update

Fiduciaries Have a Continuing Duty to Monitor 401(k) Plan

7/1/2015

Practices: Employment, Labor & Benefits

EXECUTIVE SUMMARY:
Recently, the U.S. Supreme Court confirmed in unanimous decision (9-0) that 401(k) plan fiduciaries have a continuing duty to monitor plan investments and remove imprudent investments. A failure to monitor plan investments may be considered a breach of fiduciary duty under ERISA and may cause employee retirement accounts to be reduced due to increased fees.

In *Tibble v. Edison International,* several beneficiaries of a 401(k) plan filed a lawsuit under the Employee Retirement Income Security Act ("ERISA") on behalf of the Plan and all similarly situated beneficiaries. The beneficiaries sought to recover damages for alleged losses based on the alleged breaches of fiduciary duty related to mutual fund expenses.

The issue involved three mutual funds that were added to the Plan in 1999 and three mutual funds that were added to the Plan in 2002. The beneficiaries argued that the Plan fiduciaries acted imprudently by offering these six higher- priced retail-class mutual funds as plan investments when almost identical lower-priced institutional-class mutual funds were also available to the Plan. Because the Plan was a 401(k) plan in which beneficiaries had individual account balances, the higher expenses associated with retail-class mutual funds would have the effect of reducing individual account balances.

With respect to the three retail-class mutual funds added to the Plan in 2002, the District Court found that the plan fiduciaries had "not offered a credible explanation for offering retail funds" and that they failed to exercise the "care, skill, prudence and diligence under the circumstances" that ERISA requires. With respect to the three mutual funds added in 1999, the District Court held that the beneficiaries' claims were untimely because their complaint was filed more than six years after the mutual funds were added to the Plan. Affirming the District Court, the Ninth Circuit held that the claims were untimely because the beneficiaries did not establish a change in circumstances that might result in an obligation for the Plan fiduciaries to review the change in investments within the 6-year statutory period.

In its analysis, the Supreme Court found that the Ninth Circuit did not consider that "under trust law a fiduciary is required to conduct a regular review of its investment with the nature and timing of the review contingent on the circumstances." Further, the trustee has a "continuing duty to monitor investments and remove imprudent ones. This continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset."

©2024 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

ACTION REQUIRED:

Plan fiduciaries must continuously monitor 401(k) plan fees and expenses. To assist in this process and reduce fiduciary liability, plan fiduciaries should consider hiring an investment manager / consultant who can provide the necessary investment expertise and can evaluate fees and expenses of plan investments.

To examine how *Tibble v. Edison* may affect your company and discuss a specific procedure to monitor existing investments for your company's 401(k) plan, please contact a member of Masuda Funai's Employment, Labor & Benefits Group.

©2024 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.