

# CALIFORNIA BROKER

VOLUME 34, NUMBER 5

SERVING CALIFORNIA'S LIFE/HEALTH PROFESSIONALS & FINANCIAL PLANNERS

FEBRUARY 2016



## Wellness Workout for Brokers *Shaping up Your Sales*

# Wellness

Word cloud containing terms such as: physical, pain, state, relaxation, traditional, Psychological, level, self-fulfilling, health, children, vitality, individual, high, dimensions, disappointment, objective, society, absence, low, happy, satisfied, Pleasure, economic, Experience, content, quality, subjective, Medical, well-being, class, Econom, status, introduced, diverse, Need, Sense, happiness, Positive, Well, Sales, Marketing, 401(k), Private Exchanges, Life Settlements, Life Insurance, GA View from the Top.

*Also Inside:*

Large Group Health • Disability • Sales & Marketing • Wellness • 401(k)  
GA View from the Top • Private Exchanges • Life Settlements • Life Insurance

# New 401(k) Regulations for Employers

by Ellen Bartholemy

**W**hen selling 401(k)s and other qualified retirement plans, it's important for insurance and financial brokers to be educated in the latest regulations and guidelines. Especially when it comes to fees, employers are looking to their brokers to outline their fiduciary responsibilities and help them choose the plan that is appropriate for their business structure and is in their employees' best interest.

The recent Supreme Court ruling (*Tibble v. Edison International*) makes this responsibility even more apparent. The lawsuit focused on whether financial professionals on Edison's investment committee violated their fiduciary duty by making a selection that led to higher fees. They selected retail-share classes instead of individu-

al mutual fund shares. The court ruled against Edison and decided that employers are responsible for continually monitoring the 401(k) fees charged to plan participants and ensuring that the plan continues to be in the best interest of employees.

Under the Employee Retirement Income Security Act (ERISA), employers have been responsible for initial plan and investment selections. ERISA sets minimum standards for the administration of employee benefit plans and

provides regulations for fiduciary duty as well as plan funding, participation, vesting, and accrual.

The new Supreme Court ruling protects employees even further; it's prompting many employers to re-evaluate their 401(k) investment options and potentially change providers. For those who are offering a 401(k) plan for the first time, it will be even more important to evaluate each plan with a critical eye. This is where insurance and investment brokers are more valuable than ever. Employers need extra help selecting an appropriate plan as well as continual support to ensure that they don't breach fiduciary duty each year their plan is in place.

According to the Dept. of Labor (DOL), fiduciary responsibilities include the following:

- Acting in the sole interest of plan participants and their beneficiaries.
- Carrying out their duties prudently.
- Following the plan documents (unless inconsistent with ERISA).
- Diversifying plan investments.
- Paying only reasonable expenses.

Insurance brokers, financial advisors, attorneys, and CPAs are not fiduciaries; they have no legal responsibility for a plan's administration. They serve as advisors and are there to pro-



tect the business itself. For example, a broker who sold a plan that became subject of a lawsuit would not typically be held responsible for reimbursing employers or employees for any penalties, fees, or other resulting damages.

However, in April 2015 the DOL proposed redefining a fiduciary as anyone who provides fee-based investment advice to the following entities:

- ERISA-covered employee benefit plans



- Plan fiduciaries
- Plan participants
- Plan beneficiaries
- IRA plans or IRA owners

If approved, the proposed rule would hold financial advisers, planners, brokers, investment managers, and others to ERISA's fiduciary standards as well as prohibited transaction requirements and required disclosures. Existing rules only hold non-fiduciary advisers to a suitability standard, meaning

that they can sell products that generally fit an investor's needs and risk tolerance without disclosing conflicts of interest.

Of course, clients can take legal action for negligence and other issues, so brokers still need to communicate regulations to clients and, when appropriate, refer them to a CPA or attorney for further counsel. Choosing a CPA firm that specializes in ERISA audits will help protect the assets of

the employee benefit plan and ensure that the funds are available to pay the promised benefits to employees. An incomplete or late filed report can result in significant penalties for the plan administrator, so choosing an experienced auditor is very important.

ERISA audits are generally required for companies with more than 100 employees, and include the following areas:

- Valuation of plan assets and plan obligations.
- Timeliness of contributions.
- Evaluation of whether benefit payments were made in accordance with plan terms.
- Determination if participant accounts are fairly stated.
- Determination if any transactions prohibited by ERISA.
- Review of annual 5500 form.

In addition to audits, CPA firms that specialize in employee-benefit plans will also report on any significant problems encountered, and can suggest how the employer can improve their internal control and plan operations. A CPA firm with experience in auditing ERISA plans can help employers document their thought processes behind benefit plan decisions, providing a rationale that could protect them in a lawsuit.

In the end, retirement plan benefits are wonderful recruiting and retention tools for employers. They can have significant tax benefits, but they also open businesses up to potential litigation. To reduce the risk, make sure that your clients are informed of their responsibilities from the start, and that you are in touch after you make the initial sale so they can continue to offer the best plan possible. With the new proposed fiduciary regulations, this could become more important

than ever. ★

*Ellen Bartholemey is the director of Accounting Services at Hall & Company CPAs, an independently owned accounting firm in Irvine, Calif. She has more than 25 years of experience in public accounting. Bartholemey has extensive experience with financial audits, reviews and compilations of closely held companies. For more information about Hall & Company, visit [www.hallcpas.com](http://www.hallcpas.com) or call 949-910-4255. Ellen can be contacted at [eb@hallcpas.com](mailto:eb@hallcpas.com).*