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ERISA: Fiduciaries, Fiduciary Duties, & Breach of Fiduciary Duty

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Research Guides

ERISA: Fiduciaries, Fiduciary Duties, & Breach of Fiduciary Duty

Guide Information

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Introduction

Topic Overview

Title I of the Employee Retirement Income Security Act of 1974 (ERISA) establishes certain duties and responsibilities that must be carried out by a fiduciary. As an ERISA fiduciary, a person may be held liable for employee benefit plan losses by the plan's participants or the beneficiaries of the participant.

A specific list of fiduciary duties and responsibilities are established in ERISA. These duties and responsibilities are designed to protect the benefits of the participants and their beneficiaries and to prescribe standards that may be enforced under Title I of ERISA.

A fiduciary must carry out his or her duties solely in the interest of the plan participants and beneficiaries. There are four standards for fiduciary conduct, including: the exclusive purpose rule, the prudence standard, diversification of investments, and compliance with the plan documents. The exclusive purpose rule requires the fiduciary to carry out his duties solely for the purpose of providing benefits to participants and their beneficiaries, except to the extent that assets are expended for reasonable expenses relating to the plan's operation and administration. The prudence standard requires the fiduciary discharge her duties in the manner of a prudent person with the care, skill, prudence, and diligence of a person acting in a like capacity and familiar with such matters. The diversification standard requires that investments must be diversified so as to minimize risk of large losses unless, under the circumstances, it is clearly prudent not to do so.

This research guide examines who is an ERISA fiduciary, what are the ERISA fiduciary's duties, and under what authority an ERISA fiduciary may be held liable for plan losses.

Scope of the Topic

This guide provides an overview of the law surrounding fiduciary duties, both who is an ERISA fiduciary and what the fiduciary duties are, and breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA). The resources provided in this guide include helpful laws, secondary materials, and internet resources on the topic of fiduciary duties within ERISA. However, to provide context to this specific area of ERISA law, some of the materials relate to the broad subject of employee benefits law. This research guide is intended to assist attorneys with little or no familiarity with this subject matter in gaining a better understanding of the relevant law.

About the Author

Rosanne Marie Cross graduated from Georgia State University College of Law in May 2010. While in law school, Ms. Cross served as a Georgia State University Law Review Student Writing and Symposium Associate Editor. Ms. Cross also served as a Graduate Research Assistant for Professor Anne S. Emanuel during the 2009-2010 academic year. During the summer semester of 2009, Ms. Cross served as a Graduate Research Assistant for Associate Dean of Academic Affairs Roy M. Sobelson. In the spring of 2009, Ms. Cross performed an Independent Research Study that was sponsored by Dean Sobelson on behalf of the Atlanta Bar Association. Ms. Cross also served as the Graduate Reference Assistant in the Georgia State College of Law Library during the spring 2009 and summer 2008 semesters. Before attending law school, Ms. Cross graduated from Emory University with a Bachelor of Arts in the Classics and a minor in Art History. For more information about this bibliography please contact Associate Dean for Library and Information Services Nancy P. Johnson via e-mail at njohnson@gsu.edu.

User Warning & Disclaimer

This research guide is a starting point for a law student or an attorney to research fiduciary duties and breach of fiduciary duty under the Employee Retirement and Income Security Act of 1974 (ERISA). This area of federal law has been growing, changing and expanding since 1974, and it will certainly continue to do so. It is imperative to Shepardize or KeyCite all cases and statutes before relying on them. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law Library or consult an attorney.

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Primary Sources

United States Code

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans.

ERISA requires plans to provide participants with plan information including important information about plan features and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; and gives participants the right to sue for benefits and breaches of fiduciary duty.

The following sections of the United States Code grant the right to sue for breach of fiduciary duty.

29 U.S.C.A. §§ 1109, 1132(a)(2).

These two sections provide that a participant, beneficiary, or other fiduciary may bring a civil action against any plan fiduciary who breaches any responsibilities, obligations, or duties under ERISA.

29 U.S.C.A. § 1132(a)(1)(B).

This subsection provides that a participant or beneficiary may bring a civil action to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

ERISA

Several ERISA sections, found within the United States Code, are relevant to the discussion of who is an ERISA fiduciary.

ERISA § 3(21).

This section defines fiduciary to be a person who is described in one of these three categories:

1. Management: A person is a fiduciary if she exercises any discretionary authority or control over themanagement of the plan, or exercises any authority or control over the management or disposition of assets.

2. Investment Advice for a Fee: A person is a fiduciary if he renders investment advice for a fee or other compensation, direct or indirect, with respect to any assets of the plan, or has the authority or responsibility to render such advice even if not actually rendered.

3. Administration: A person is a fiduciary if he has any discretionary authority or responsibility in the administrationof the plan.

ERISA § 3(38)(A)–(C).

This section classifies an investment manager as a fiduciary, defines what an investment manager has the power to do, and permits a limited list of persons to act as an ERISA investment manager.

ERISA § 402(a).

This section requires that a plan have at least one named fiduciary or provide a procedure for identifying a named fiduciary.

ERISA §§ 402(b)(2), 403(a), 405(c).

These sections explain that a named fiduciary may be given the authority to appoint a trustee or investment manager and to allocate responsibilities for plan administration to other fiduciaries.

ERISA § 402(c)(3).

This section permits only a named fiduciary to appoint an investment manager.

ERISA § 405.

This section provides that co-fiduciary liability may exist where a person engages in the activity described in this section with respect to another fiduciary's breach.

ERISA § 408(b)(2).

This section, when combined with IRC § 4975(d)(2) requires that the service provider disclose the fees that it receives with respect to the operation of the plan, in order for the responsible fiduciary to evaluate the fees and determine if the fees are reasonable. With such disclosure, the fees payable to a service provider from plan assets are exempt from the prohibited transactions rules.

The following ERISA sections describe an ERISA fiduciary's duties.

ERISA § 3(9).

This subsection defines a person to include a corporation.

ERISA § 402(a)(1).

This subsection speaks to the plan's general administration and requires that every employee benefit plan be established and maintained pursuant to a written agreement. The plan document must also provide for one or more named fiduciaries who jointly or severally have the authority or control to manage the operation and the administration of the plan.

ERISA § 404(a)(1)(A).

This subsection dictates that a fiduciary's duties must be carried out for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan.

ERISA § 404(a)(1)(B).

This subsection requires that a fiduciary discharge his duties in a manner of a prudent person with the care, skill, prudence, and diligence of a person acting in a like capacity and familiar with such matters.

ERISA § 404(c)(1)(A).

This subsection speaks to the plan's general administration and requires that the plan provide a procedure for amending the plan and for indentifying the persons who have the authority to amend the plan.

ERISA § 404(c)(1)(C).

This subsection requires that a fiduciary diversify investments so as to minimize the risks of large losses unless, under the circumstances, it is clearly prudent not to do so.

ERISA § 404(c)(1)(D).

This subsection requires that a fiduciary carry out his duties in accordance with the documents and instruments that govern the plan.

Internal Revenue Code

The following sections of the Internal Revenue Code are useful in determining who is an ERISA fiduciary.

IRC § 401(a)(2).

This code applies to qualified plans and dictates the fiduciary's duties with respect to those plans.

IRC § 4975(d)(2).

This section, when combined with ERISA § 408(b)(2) requires that the service provider disclose the fees that it receives with respect to the operation of the plan, in order for the responsible fiduciary to evaluate the fees and determine if the fees are reasonable. With such disclosure, the fees payable to a service provider from plan assets are exempt from the prohibited transactions rules.

Department of Labor Regulations, Advisory Opinions & Interpretive Bulletins

The following portions of one DOL Regulation are enlightening on the topic of who is an ERISA fiduciary.

DOL Reg. § 2510.3-21(c).

This subsection describes the three elements that are used to determine if a person who renders investment advice is a fiduciary.

DOL Reg. § 2510.3-21(c)(2).

This subsection explains that if a person has the right to provide investment advice in relation to a portion of the plan's assets he may be a fiduciary.

DOL Reg. § 2510.3-21(d).

This subsection describes when a person may be a fiduciary because of the execution of securities transactions.

The following DOL Regulation describes an ERISA fiduciary's duties.

DOL Reg. § 2550.404a-1(b).

This DOL Regulation explains that a fiduciary responsible for making investment decisions is subject to a prudence standard that would apply to a person familiar with investment decisions.

The following DOL Advisory Opinion is useful when determining who is an ERISA fiduciary.

DOL Adv. Opns. 84-03A, 84-04A.

This DOL Advisory opinion describes when a person providing investment consulting services may be a fiduciary through examination of the facts and circumstances.

The following DOL Advisory Opinion speaks to an ERISA fiduciary's duties.

DOL Advisory Opinion 2002-08A.

This Advisory Opinion lists some of the items that a fiduciary needs to consider when selecting a service provider.

The following DOL Interpretive Bulletins are helpful for determining who is an ERISA fiduciary.

DOL Interpretive Bulletin 75-5, FR-1.

This DOL Interpretative Bulletin explains that if a plan document designates a person who is primarily responsible for the administration and operation of the plan, that person is a fiduciary.

DOL Interpretive Bulletin 75-5, FR-3.

This DOL Interpretative Bulletin explains that the named fiduciary within the plan document may be a corporation.

DOL Interpretive Bulletin 75-5, Q&A D-1.

This DOL Interpretative Bulletin explains that, barring a factual situation where the third-party service provider or administrator falls into one of the enumerated fiduciary functions, a third-party service provider or administrator is usually not a fiduciary.

DOL Interpretive Bulletin 75-8, Q&A D-4.

This DOL Interpretive Bulletin explains that an officer or director is a fiduciary to the extent that she is allocated responsibilities of the plan administrator and does not merely fulfill ministerial functions.

DOL Interpretive Bulletin 75-8, Q&A D-5.

This DOL Interpretative Bulletin includes the plan administrator and the trustee as examples of persons who are fiduciaries by virtue of their discretionary authority or responsibility in the administration of the plan. An officer is not a fiduciary solely because of his title.

The following DOL Interpretive Bulletin speaks to an ERISA fiduciary's duties.

DOL Interpretive Bulletin 75-8, Q&A FR-17.

This Interpretive Bulletin explains that a fiduciary is responsible for prudently monitoring the activities and reviewing the performance of persons she names to carry out specific duties relating to the plan's operation.

Supreme Court Decisions

The following Supreme Court cases are useful when determining who is an ERISA fiduciary.

Beck v. PACE International Union, 551 U.S. 96 (2007).

In this case, the Supreme Court found that a merger was not a type of plan termination and that the decision to terminate was not a fiduciary action.

Hughes Aircraft Co. v. Jacobson, 525 U.S. 432 (1999); *Lockheed Corp. v. Spink*, 517 U.S. 882 (1996).

In these cases, the Supreme Court ruled that the amendment of a plan was not a fiduciary action.

Mertens v. Hewitt Assoc., 508 U.S. 248 (1993).

In this case, the Supreme Court ruled that an actuarial firm was not acting in a fiduciary capacity in performing actuarial services.

The following Supreme Court case discusses ERISA fiduciary duties.

Curtis-Wright Corp. v. Schoonegjongen, 514 U.S. 73 (1995).

Supreme Court case concluded that ERISA § 402(b)(3) requires two things: a procedure for amending the plan, and a procedure for identifying the persons who have the authority to amend the plan.

The following Supreme Court case relates to the breach of an ERISA fiduciary duty.

Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134 (1985) (noting that the drafters of that provision were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the entire plan, rather than with the rights of individual beneficiaries).

This Supreme Court case explains that recovery from a fiduciary for breach of fiduciary duty inures to the benefit of the plan as a whole.

Appellate Court & District Court Decisions

The following cases are enlightening on the topic of who is an ERISA fiduciary.

Akers v. Palmer, 71 F.3d 226 (6th Cir. 1995).

In this Sixth Circuit case the court determined that the adoption of a plan is not a fiduciary action.

Arizona State Carpenters Pension Fund v. Citibank, 125 F.3d 715 (9th Cir. 1997).

This Ninth Circuit case stands for the proposition that a custodian who has possession of the plan assets but does not have any discretionary authority with respect to the disposition of the assets or the administration of the plan may result in fiduciary status.

Beddall v. State Street Bank & Trust Co., 137 F.3d 12 (1st Cir. 1998).

This First Circuit case stands for the proposition that acting as a good Samaritan does not push a service provider into the status of a fiduciary.

Corcoran v. Bell Atlantic Corp., 22 EBC 1489 (3rd Cir. 1998); *Gard v. Blakenburg*, 27 EBC 1776 (6th Cir. 2001); *Johnson v. Georgia-Pacific Corp.*, 19 F.3d 1184 (7th Cir. 1994).

These two cases show that courts do not consider the amendment of a plan a fiduciary action.

CSA 401(k) Plan v. Pension Professionals Inc., 23 EBC 2241 (9th Cir. Nov. 23, 1999).

This Ninth Circuit case stands for the proposition that acting as a good Samaritan does not push a service provider into the status of a fiduciary.

Dudley Supermarket, Inc. v. Transamerica Life Ins. & Annuity Co., 302 F.3d 1 (1st Cir. 2002).

In this First Circuit case, the court determined that an advisor was acting as in the capacity of a fiduciary, because he was being compensated as the primary, individualized, and routine provider of investment advice for the defined benefit plan and the plan's trustees were inexperienced and lacked sophistication.

LoPresti v. Terwilliger, 126 F.3d 34 (2nd Cir. 1997).

In this Second Circuit case, the court determined that if a person actually exercises control over the plan's management or the disposition of plan assets then the enforcement provisions of ERISA can be brought against that fiduciary to recover any loss that the plan may have incurred because of that person's actions.

Martin v. Feilen, 965 F.2d 660 (8th Cir. 1992).

In this Eighth Circuit case, the court found that the accountant was a fiduciary, even though the actions of an accountant are generally ministerial, which do not cause the accountant to be a fiduciary.

Morse v. Adams, 837 F.2d 339 (6th Cir. 1998).

In this Sixth Circuit case the court determined that plan termination is not a fiduciary action.

Schmidt v. Sheet Metal Workers' National Pension Fund, 128 F.3d 541 (7th Cir. 2007).

This Seventh Circuit case explains that if an employer fails to make prudent review and evaluation of employees who are responsible for the operation of the plan the employer may be subject to liability as a fiduciary.

Shofer v. Stuart Hack Co., 22 EBC 2593 (Md. Ct. of Special Apps. 1999).

This case is an example that ERISA does not preempt a claim of negligence with respect to contractual obligations against a third-party administrator.

Thomas, Head & Greisen Employees Trust v. Buster, 24 F.3d 1114 (9th Cir. 1994).

In this Ninth Circuit case, the court determined that the person was a fiduciary because he was rendering investment advice for a fee and there was an ongoing relationship between the parties for over nine years that involved a significant percentage of the plan's assets.

Useden v. Acker, 947 F.2d 1563 (11th Cir. 1991).

In this Eleventh Circuit case the court held that a bank was not a fiduciary merely because it lent money to a plan.

Wood v. CAN Ins. Companies, 837 F.2d 1402 (5th Cir. 1988).

This Fifth Circuit case stands for the proposition that a financial institution is not a fiduciary solely because of investment transactions with the plan.

The following cases relate to the breach of ERISA fiduciary duty.

Allison v. Bank One-Denver, 289 F.3d 1223 (10th Cir. 2002), as amended on denial of reh'g, (June 19, 2002).

This Tenth Circuit case shos that for an ERISA fiduciary to be liable for a breach of duty, there must be a showing of some causal link between the alleged breach and the loss the plaintiff seeks to recover.

Darcangelo v. Verizon Communications, Inc., 292 F.3d 181 (4th Cir. 2002).

This Fourth Circuit case displays that an employee's breach-of-fiduciary-duty claim against an employer and disability-benefits plan administrator will fail to state a claim upon which relief may be granted under ERISA, where the complaint alleges that the conduct was non-fiduciary in nature and unrelated to the administrator's duties under the plan.

First Nat. Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc., 960 F.2d 1546 (11th Cir. 1992).

This Eleventh Circuit case explains that an insured employer under a life and health policy used to fund an employee benefit program covered by ERISA is not a fiduciary of the insurer while identifying employees eligible for coverage and forwarding premiums and claims, so as to be subject to the ERISA provisions dealing with fiduciaries.

Frahm v. Equitable Life Assur. Soc. of U.S., 137 F.3d 955 (7th Cir. 1998).

This Seventh Circuit case explains that, within the facts of this case, the ERISA provisions, which create a duty of care by requiring the administrator to use the care, skill, prudence, and diligence, require that a prudent person acting in a like capacity and familiar with such matters would use in conduct of like enterprise does not create a standard of absolute liability.

In re Unisys Sav. Plan Litigation, 74 F.3d 420 (3d Cir. 1996).

This Third Circuit case shows that a fiduciary is excused from liability for any loss which results from a participant's or beneficiary's exercise of control over an investment under an ERISA provision and that the causal nexus between the participant's or beneficiary's exercise of control and claimed loss is established with proof that the participant's or beneficiary's control is the cause-in-fact, as well as a substantial contributing factor in bringing about the loss incurred.

Steinman v. Hicks, 252 F. Supp. 2d 746 (C.D. Ill. 2003).

This Illinois case explains that to determine whether a person is a fiduciary under ERISA with respect to the particular function at issue, discretionary authority or responsibility of such person with respect to that function must be examined and the actions of the person to be charged as a fiduciary for the function must be considered.

Tregoning v. American Community Mut. Ins. Co., 815 F. Supp. 1054 (W.D. Mich. 1992), order aff'd, 12 F.3d 79 (6th Cir. 1993); *Simeon v. Mount Sinai Medical Center*, 150 F. Supp. 2d 598 (S.D. N.Y. 2001).

These two cases examine when the members of a committee, which administer an ERISA profit-sharing plan, but did not become members until after the plan was terminated and the assets distributed, cannot be liable for breach of fiduciary duty under ERISA, arising from the management of plan assets, as the members were not "fiduciaries" of the plan participants, and the alleged breach was committed before they became members.

Vogel v. Independence Federal Sav. Bank, 728 F. Supp. 1210 (D. Md. 1990).

This Maryland case examined a fact situation where an employer who maintained a group health policy for employees, and who was the plan administrator, is a fiduciary under ERISA, and may be sued by an employee's family members for alleged breach of fiduciary duty arising out of termination of coverage for that particular employee.

Youngberg v. Bekins Co., 930 F. Supp. 1396 (E.D. Cal. 1996).

This California case involves a suit for indemnity by a fiduciary against a co-fiduciary predicated upon the latter's violation of the terms of a plan may also be brought under ERISA.

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Secondary Sources

Treatises

- ERISA Practice and Procedure, 2d by Ronald J. Cooke
  http://west.thomson.com/productdetail/2586/13513513/productdetail.aspxThis work provides a practical approach to the Employee Retirement Income Security Act (ERISA). It includes an in-depth discussion of various aspects of ERISA, such as the administration of ERISA, fiduciary responsibilities, and plan termination, as well as an on-going discussion of the impact of the Pension Protection Act of 2006. Written by a respected practitioner in the field, it outlines ERISA coverage and scope, as well as reporting details and disclosure requirements. It includes chapters on participation, vesting, and benefit accrual; minimum funding standards; fiduciary responsibility; plan termination insurance and withdrawal liability; and ERISA administration and enforcement.
- Employee Fringe and Welfare Benefit Plans, 2010 ed. by Michael J. Canan, William Mitchell
  http://west.thomson.com/productdetail/160301/22030665/productdetail.aspxPublished as a companion to Qualified Retirement Plans, this book discusses major types of employee fringe and welfare benefit plans available under the Employee Retirement Income Security Act (ERISA). Chapters discuss the applicability of ERISA to different plans, the effect of ERISA application, fiduciary requirements under ERISA, and other laws (including the Internal Revenue Code) that affect plans, such as age, race, and sex discrimination laws. Appendixes provide many sample plans, including a model cafeteria plan, Rabbi Trust deferred compensation plan, and golden parachute agreements, as well as resolutions and transmittal letters.

Looseleafs

The following looseleaf services may be useful for a practitioner interested in ERISA.

- Benefits Practice Center (BNA)
  http://www.bna.com/products/eb/bpcw.htm
  BNA's Benefits Practice Center pulls together three separate libraries, Employee Benefits Library, ERISA Compliance & Enforcement Library, and Executive Compensation Library, into one comprehensive, seamlessly integrated set of tools to help you design plans, avoid flaws and tax problems, and respond quickly and confidently to the full range of potential issues—all in one place.
  This service helps you:

  - Find the guidance you need to organize, prioritize, analyze, and litigate the expanding body of benefits law and policy.

- Get analysis from leading benefits attorneys to take you all the way through every transaction, step by step. Handle inquiries on virtually any topic with confidence.

- Manage compliance responsibilities with hundreds of interactive forms that make your reporting, recordkeeping, filing, and disclosure obligations easier. Timely updates keep you informed of changes in compliance requirements.

- Have the resources you need to effectively represent clients before the courts, the Internal Revenue Service, and the Department of Labor.

- Benchmark you plan's compliance status against the corrections outlined in the Voluntary Compliance Summaries infobase.

- Discover how to identify and self-correct regulatory violations by plans under voluntary compliance programs. Learn how to head off agency audits.

- Negotiate the appropriate executive compensation package.

- Understand the implications for executive compensation packages in merger and acquisition situations.

- Craft strong equity-based plans, nonqualified plans, and more.

- Comprehend the tax ramifications of your executive compensation plan.

- Stay on top of current developments with the top highlights from BNA's Pension & Benefits Daily , the industry's premier daily news service.

- Compensation & Benefits Library (BNA)
  http://www.bna.com/products/eb/cblw.htm
  Accurate answers and practical guidance make this service your most powerful tool to design, analyze, compare, administer, and communicate compensation and benefits programs that comply with legal requirements.
  This service helps you:

  - Find out about new industry trends and practices and how to implement them using practical reference information. Special planning and design tools, sample forms and policies, and at-a-glance comparison charts help you tackle day-to-day and long-term administrative challenges -- and keep track of them.

  - Determine whether a program or benefit is right for your organization with detailed discussions of pro's and con's, complete with real-life examples.

  - Organize and prioritize your work better with results-oriented information written in clear language -- much more than a restatement of statutes and regulations.

  - See where your programs and benefits stand in an industry-wide context with descriptions of current surveys and relevant economic data.

  - Boost your productivity, expedite research, and speed through your responsibilities!

  - Improve communications and handle a wide range of inquiries from employees and colleagues with expert analysis and full-text agency documents. Answer questions on compensation, pensions and retirement, and health and welfare benefits.

  - Comply with regulatory requirements, presented in plain English and linked to the language of the rules themselves.

  - Have the full text of the most significant statutes and regulations affecting compensation and benefits at your fingertips, including the Internal Revenue Code, Treasury Regs, ERISA, Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Medicare Secondary Payer Act, and many more.

  - Stay alert to regulatory changes and other important news and developments with the biweekly newsletter, Benefits & Compensation Management Update , included with your subscription.

  - Get the most complete compensation and benefits solution with new content collections featuring Total Rewards, Fast Answers, and Setting and Managing Compensation. New Enhancements include Topic Navigation, Customized Menus Homepage, Saved Searches, Favorite Documents, and more!

  - Consult IRS, DOL, and PBGC documents in full text for further clarifications.

  - Stay alert to any regulatory changes with timely updates.

  - Save time. Use the continuously updated collection of interactive forms to make reporting, recordkeeping, filing, and disclosure obligations easier.

  - Prepare job descriptions and performance evaluations with customized results quickly and easily with KnowledgePoint software.

- Employee Benefits Cases (BNA)
  http://www.bna.com/products/eb/ebcs.htm
  Get comprehensive coverage of employee benefits case law with the text of more than 6,000 precedent-setting federal and state court decisions and important rulings of arbitrators.
  This product helps you:

  - Stay alert to the most current rulings on benefit plan design and management, and related precedent-setting federal and state court opinions, reproduced verbatim.

  - Follow disputes from beginning to end with cases from the lower courts to the U.S. Supreme Court.

  - Spot decisional trends and watch how courts in different jurisdictions rule on similar kinds of benefits cases.

  - Form your own interpretations by consulting the decisionmakers' original language, not paraphrased newspaper accounts.

  - Speed your research. Easy-to-use finding aids help you locate specific cases and problems by topic, forward and reverse titles, or jurisdiction.

- Know immediately the points of law covered in particular cases, with BNA's exclusive explanatory headnotes.

- Employee Benefits Library™ (BNA)
  http://www.bna.com/products/eb/ebl.htm
  Experienced practitioners rely on this Library for its broad array of resources related to benefits, compensation, and pensions—including guidance in the creation, design, and management of plans, and reference to cases, laws, and regulations.
  This service helps you:

  - Find the guidance you need to organize, prioritize, and analyze the expanding body of employee benefits law and policy.

  - Handle inquiries from employees, clients, and colleagues on virtually any pertinent topic with confidence.

  - Manage compliance responsibilities with hundreds of interactive forms that make reporting, record keeping, filing, and disclosure obligations easier.

  - Have the resources you need to represent clients effectively before the courts, Internal Revenue Service, Department of Labor, and the Pension Benefit Guaranty Corporation.

  - Streamline your administrative activities. Planning and design tools help you evaluate gray areas and spot potential trouble.

  - Benefit from sophisticated analysis by top practitioners to focus on tax-related compensation and benefits matters.

  - Explore the language of thousands of relevant decisions, statutes, regulations, and agency documents on employee benefits issues, reproduced verbatim.

  - Stay on top of current developments, including changes in compliance requirements, with timely news updates.

  This product is divided into the following sections:

  - Compensation & Benefits Guide presents detailed material in a clear-cut “how-to” style, focusing on the advantages, disadvantages, and requirements of various compensation and benefits arrangements.

  - Benefits & Compensation Management Update covers the latest news, developments, trends, and practices in compensation and employee benefits, on a biweekly basis.

  - Employee Benefits Law, updated with annual supplements, is the complete BNA Books treatise by members of the Employee Benefits Committee of the American Bar Association’s Section of Labor and Employment Law.

  - Tax Management’s Compensation Planning Series 30+ portfolios offer exclusive analysis by top ERISA practitioners and working papers with numerous sample plans, related practice documents, examples, checklists, charts, legislative history, preambles to regulations, and more.

  - Employee Benefits Cases feature full text of relevant federal and state court opinions and selected decisions of the National Labor Relations Board and arbitrators, with BNA headnotes and classification outline.

  - Laws, Regulations, and Agency Documents include the up-to-date full text of relevant statutes, regulations, and source documents from the IRS, EBSA, SEC, and PBGC. Research and Practice Tools include interactive forms, sample client letters, and portfolio working papers.

- ERISA Compliance & Enforcement Library™ (BNA)
  http://www.bna.com/products/eb/erisa.htm
  This is your all-in-one source for navigating ERISA compliance and audit programs, handling litigation, and responding to enforcement. BNA gives you footnoted, common-sense guidance—from professionals, for professionals.
  This service helps you:

  - Make informed decisions to discover and resolve problems with the plans you advise or represent as an attorney, consultant, accountant, or plan fiduciary, administrator, or sponsor.

  - Turn to the top names in the field for authoritative guidance and practical, expert interpretations of how each program works and how to expedite procedures. You’ll recognize the names of Library contributors from publications, conferences, seminars, or their previous high-level positions with government agencies.

  - Take advantage of the opportunities presented by voluntary compliance programs. Discover how to identify and self-correct violations of ERISA and tax regulations. Head off audits by IRS, DOL, PBGC, which, once begun, end the chance for self-correction and increase the potential for stiff fines.

  - Have a solid benchmark to advise clients on voluntary compliance, comparing your plan’s status against the corrections outlined in the Voluntary Compliance Summaries.

  - Learn strategies to limit the scope of an audit that your plan may be forced to undergo. Find out how to prepare, work with a government agent, understand the nature and severity of violations discovered, reach an agreement on corrections, negotiate penalties, and, ultimately, prevent plan disqualification.

  - Have a road map of options for resolving problems with succinct, easy-to-read, to-the-point reports. Each covers a constellation of rules applicable to an issue, the pros and cons of possible responses, practice tips, and full-text statutes and regulations.

  - Boost your expertise and save time, even if you’re already an expert. The Library distills information from a wide range of legal and professional sources that you’d otherwise have to find yourself.

  This service is divided into the following sections:

  - ERISA Compliance & Enforcement Strategy Guide is a collection of reports discussing IRS, DOL, and PBGC voluntary programs, enforcement initiatives, audits, investigations, and litigation of qualified retirement plans, executive compensation, and health, and fringe benefits; additional reports cover employment taxes and benefit issues, international benefits, and the role of technology in compliance.

  - Voluntary Compliance Summaries outline corrections of qualified retirement plan problems through IRS’s Employee Plans Compliance Resolution System. The summaries, compiled by Seth Tievsky, are confidential and anonymous but are based on actual corrections and contain the compliance statement date and program under which the

correction was made, the violated tax code section and topic, a brief description of the problem, and the correction suggested by the IRS.

- Practice Tools include sample letters, checklists, and model documents.

- Selected Enforcement Documents include agency manuals, advisory opinions, revenue procedures, and other useful materials, and are found with other agency documents.

- Laws, Regulations, & Agency Documents include the up-to-date full text of relevant statutes, regulations, and source documents from the IRS, EBSA, SEC, and PBGC.

- Executive Compensation Library (BNA) (Part of BNA's Benefits Practice Center)
  http://www.bna.com/products/eb/ecl.htm
  Benefit from practitioner-written guidance, detailed information, and in-depth discussions concerning the design and administration of compensation plans for executives, directors, and other top employees -- the full range of tax, securities, and accounting considerations.
  This service helps you:

  - Have thorough coverage of all major laws affecting executive compensation. Benefit from expert guidance on compliance issues related to recent additions to the Internal Revenue Code, amendments to the securities laws, Sarbanes-Oxley, and standards under the Financial Accounting Standards Board.

  - Provide a compensation program that will attract, motivate, and retain the level of executives needed within the context of a sensible business strategy and a responsible budget.

  - Design a reasonable, defensible, and appropriate executive compensation package that contains all the right elements.

  - Focus specifically and conveniently on executive compensation in monographs from BNA's Corporate Practice Series and Tax Management's Compensation Planning Series, two respected collections of BNA Portfolios.

  - Explore ways to handle simple as well as complex transactions with detailed analyses in the Executive & Director Compensation Reference Guide.

  - Refer to plain-English definitions and explanations of pertinent topics in the Compensation & Benefits Guide.

  - Consult selected important court decisions in Executive Compensation Cases and other primary source materials in Laws, Regulations, and Agency Documents.

  - Gain insights on emerging trends and controversial topics, such as recent regulatory changes and proposals aimed at executive pay practices, with articles in Journal Reports: Law & Policy.

  - Use Practice Aids including sample letters, checklists, tables, and charts, to better manage everyday tasks and resolve problems.

  - Have a helpful resource for approaches to litigation, arbitration, and settlement in the event of a dispute.

- Employee Benefits Management (CCH)
  http://hr.cch.com/products/ProductID-149.asp
  Get plain English explanations on creating, evaluating, and administering all types of employee benefit plans. Employee Benefits Management offers practical guidance on the full spectrum of employee benefits including health plans, family leave, 401(k) plans, and more. Design and implement the most effective employee benefits package!
  This service has the following benefits and features:

  - Tax and non-tax statutes and regulations give comprehensive, coast-to-coast coverage of the legal issues.

  - Full text of the Internal Revenue Code.
  Full text of ERISA and ERISA regulations, plus IRS, DOL, and PBGC documents.

  - Summaries of revenue rulings and procedures.
  Detailed CCH explanations and analysis walk you through all the legal considerations associated with employee benefits.

  - Sample benefits plans and forms (IRS / DOL / PBGC) give you a working model for designing and implementing various benefit plans (sample forms available in print only).

  - Reporting calendars provide you with the key action dates and filing deadlines.

  - Checklists and tables help you calculate employment tax rates, valuation, and interest rates.

  - Keynote capsules give easy-to-scan summaries of topics.

  - Exclusive "Benefits by Topic" section provides basic explanation of virtually every type of employee benefit.

  - Twice-monthly newsletter , Employee Benefits Management Directions, highlights pending legislation, new developments, interviews with experts, trends, surveys, hot topics, and the latest breaking news in the benefits area. (also available separately)

  - Electronic subscriptions provide the ease and efficiency of CCH Searching. CCH´s powerful search engine makes your research effortless, with special tools to help target your search and boost your efficiency. No matter which electronic format you choose, you can apply sophisticated criteria from one convenient search screen and pinpoint the information you need in no time.

  - The print reporter´s organization and finding aids help you locate information quickly and easily. Paragraph and page numbers are used throughout for indexing, citing, and cross-referencing. Plus tabbed sections, tables of contents, and various indices help you search efficiently and successfully every time.

  - Optional INTERACTIVE FORMS via Internet allow you to access, fill-out and print-out official forms right from your desktop! Features the most commonly-used forms, updated and augmented regularly.

American Law Reports (A.L.R.)

A.L.R. provides an objective, in-depth, analysis of many specific legal issues, together with a complete list of every case—in every jurisdiction—that discusses it. With thousands of attorney-authored articles covering the entire breadth of U.S. law, A.L.R. can save hours of research time when trying to quickly get familiar with an area of law. This series has been cited by more courts than any other secondary resource, and can be found on Westlaw or LexisNexis. A.L.R. articles are attorney authored and cover the entire breadth of U.S. law. Use A.L.R. articles to help you quickly get up to speed in an unfamiliar area of law; locate all relevant caselaw in one easy step; answer and advise with confidence; and determine which cases are controlling and understand why.

- James Lockhart, JD, Annotation, When Is Employer, Labor Union, Affiliated Entity or Person, or Pension or Welfare Plan "Fiduciary" Within Meaning of § 3(21)(A)(i) or (iii) of Employee Retirement Income Security Act of 1974 (29 U.S.C.A. § 1002(21)(A)(i)

  178 A.L.R. Fed. 129 (2002).

  This A.L.R. was originally published in 2002, but has been consistently updated to include new relevant case law. This article discusses when an employer can qualify as an ERISA plan fiduciary "to the extent that" it exercises authority, control, or responsibility with respect to the plan or its assets.

- Michael A. de Freitas, J.D., Annotation, Judicial review of denial of health care benefits under employee benefit plan governed by Employee Retirement Income Security Act (ERISA) (29 U.S.C.A. § 1132(a)(1)(b))—post–Firestone cases
  128 A.L.R. Fed. 1 (1995).

  Originally published in 1995, this A.L.R. has been consistently updated to include new relevant case law. This article discusses the cases following the Supreme Court decision in Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989), which established that courts are to review denials of benefits under a de novo standard of review unless the plan grants discretionary authority to the plan administrator to make decisions concerning eligibility and bene

- Ann K. Wooster, J.D., Annotation, Judicial Review of Denial of Disability Benefits Under Employee Benefit Plan Governed by Employee Retirement Income Security Act (ERISA), 29 U.S.C.A. § 1132(a)(1)(B)—Selection and Scope of Particular Standards of Revie

  12 A.L.R. Fed. 2d 1 (2006)

  Originally published in 2006, this A.L.R. has been consistently updated with new caselaw. This article discusses the cases following the Supreme Court's decision in Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989). The article examines the selection and scope of particular standards of review following the denial of disability benefits under an ERISA employee welfare benefit plan.

- Michael A. Rosenhouse, J.D., Annotation, Application of Equitable Estoppel Against Nonsignatory to Compel Arbitration Under Federal Law
  43 A.L.R. Fed. 2d 275 (2010)

  Originally published in 2010, this A.L.R. has been consistently updated with new cases. This article discusses the issues surrounding whether nonsignatories to an arbitration agreement can be compelled to arbitrate their claims with a signatory. In the ERISA context, the article examines whether an employee benefit plan participant may be bound by an arbitration clause.

Legislative History

The following database is available through Westlaw.

Arnold and Porter Legislative History-Employee Retirement Income Security Act of 1974.

This database contains a comprehensive legislative history of the Employees Retirement Income Security Act of 1974 (ERISA), P.L. 93-406; document may be a public law, committee report, bill or amendment version, hearing or excerpt of congressional debate.

Newsletters & Alerting Services

- Employee Benefit News
  http://ebn.benefitnews.com/
  Employee Benefit News is an online and print news resource whose mission is to help benefit plan sponsors put information into action.
  A free print and online subscription to the Employee Benefit News is available online. The magazine provides hot news items in the broad area of employee benefits, which may include a fiduciary's breach of fiduciary duty.

- Pension & Benefits Daily (BNA)
  http://www.bna.com/products/eb/pend.htm
  This daily email newsletter gives you the official word on the day's top pension and benefits developments, with instant links directly to the full source documents.
  This service helps you:

  - Stay on top of the latest industry news, developments, and emerging trends in today's fast-paced pension and benefits arena.

  - Link instantly to verbatim reprints of important documents, including IRS, Labor Department, and Pension Benefit Guaranty Corporation rules, announcements, notices, and letters, plus major court and agency decisions.

  - Quickly track the progress of proposed and final legislation and regulations, enforcement and other administrative actions, state developments, and industry activities.

  - Advise clients with confidence. You'll be on target every time with instant reference to ERISA compliance requirements and other provisions.

  - Save time. Review the day's most important news at a glance, link instantly from e-mail highlights to full-length articles.

- Pension & Benefits Reporter (BNA)
  http://www.bna.com/products/eb/pen.htm
  This weekly notification, available in print or in e-mail summaries, monitors the laws, regulations, cases, and issues that influence pension and benefits policy, design, and administration, and base your decisionmaking on a complete collection of authoritative pension reference documents and forms.
  This service helps you to:

  - Stay on top of news and trends in today's fast-paced pension and benefits arena. Get the inside story on federal and state legislative, legal, regulatory, and industry developments, delivered by BNA's national network of reporters and correspondents.

  - Have the information you need to plan and administer the best possible pension and employee benefits package for your company.

  - Ease compliance with changing statutory requirements. Track the progress of proposed and final legislation and regulations. Monitor enforcement efforts.

  - Consult verbatim reprints of important documents, including IRS, Labor Department, and Pension Benefit Guaranty Corporation rules, announcements, notices, letters, and forms, plus major decisions of courts, agencies, and arbitrators.

  - Be aware of state and local government initiatives affecting pension and health benefit plans. Find out about labor programs.

  - Advise clients with confidence. You'll be on target every time with the full text of compliance provisions.

  - Understand pension-related tax legislation and policy.

  - Trust the information service that's been publishing since ERISA was enacted in 1974.
- Benefits & Compensation Management Update (BNA)
  http://www.bna.com/products/eb/cbgd.htm
  This biweekly, print notification service helps you stay alert to regulatory changes affecting compensation and benefits, find out about industry trends, and review current surveys and statistics with this useful newsletter.
  This service helps you:

  - Use the Update 's timely, accurate information to keep current with events that have an impact on compensation and benefits programs.

  - Get a grip on day-to-day and long-term compliance challenges by keeping track of new legislation and regulations.

  - Find out about new industry trends and practices and how to implement them.

  - See where your programs and benefits stand in an industry-wide context with descriptions of current surveys and relevant economic data.

  - Organize and prioritize your work better with results-oriented news and analysis, written in plain English.

  - Rely on insightful articles for help answering employees' and colleagues' questions on compensation, pensions and retirement, and health and welfare benefits.
- BenefitsAnswersNow™ (CCH)
  http://hr.cch.com/products/ProductID-2112.asp
  BenefitsAnswersNow™ a straightforward, question -and-answer format, providing easy to access information on over 1000 benefits specific questions in one product. Designed for fast access, it offers the best of both worlds – expert CCH® research and explanations, in a real-world, solutions-based format.
  BenefitsAnswersNow™ focuses specifically on benefits and benefits related issues with a depth of coverage not found in other, more generalized human resource references. What's more, its intuitive user interface points you in the right direction immediately, so you're not tying up your day searching through extraneous information.

  You can use BenefitsAnswersNow's™ sample benefits plans and policies to create or modify your own. You can also utilize the complete text of benefits related federal laws and regulations, when you want to intensify your research.
- Employee Benefits Management Directions Newsletter (CCH)
  http://hr.cch.com/products/ProductID-264.asp
  Employee Benefits Management Directions is a bi-weekly newsletter highlighting pending legislation and new developments in the welfare and retirement benefit areas.
  This newsletter has the following benefits and features:

  - Either an interview with a benefits expert, or an in-depth analysis of ground-breaking news.

  - New developments.

  - Highlights of recent best case practices in the benefits field.

  - Highlights of pending legislation.

  - Surveys and checklists.

  - Analysis of benefit trends, surveys and company practices.

  - Summaries of IRS and Labor Department regulations, rulings and releases, and state laws and court decisions.

  - Listings of upcoming deadlines and future benefits seminars.

Legal Encyclopedias

A notable legal encyclopedia article of relevance is listed below, and can be found on Westlaw or LexisNexis.

- 60A Am. Jur. 2d Pensions § 806
  This legal encyclopedia article provides a general overview of redressing a breach of fiduciary duty through private civil actions under ERISA.

Materials Available in the GSU Law Library

Below is a sampling of materials available in the GSU Law Library. Always remember, the reference desk inside the law library is an extremely useful resource for all types of legal research, including the area of employee benefits.

- Employee Benefit Plans by Barry Kozak
  ISBN: 1594606390
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 2085302Employee Benefit Plans helps students understand what tax-advantaged benefits can be promised and delivered to employees through an employer plan, the statutory and regulatory provisions that must be followed by the employer, the manner and extent to which the federal agencies regulate the delivery of employee benefits, how employees perceive and appreciate these voluntary benefits, and the various public policy issues that permeate every aspect of employee benefits.
- Employee Benefit Plans: A Glossary of Terms by Becky A. Wright, ed.
  Call Number: HD4928.N6 E46 1984
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 28157This book, now in its 5th edition, provides an extensive review of employee benefit plan terms. It is an excellent starting point for a practitioner who without specific training in employee benefits.
- Employee Benefit Claims: Law and Practice by Henry H. Perritt, Jr.
  Call Number: KF3509 .P47 1990
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 39659This article, available in the series titled Employment Law Library, reviews selected claims available to the plan participant and includes useful information for the employee benefits practitioner working in the litigation arena.
- The Annotated Fiduciary: Materials on Fiduciary Responsibility and Prohibited Transactions under ERISA by Marc Gertner and Vivian C. Folk
  Call Number: KF3512 .A94 1989
  ISBN: 0891543821
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 39045This book, in its third edition, reviews ERISA fiduciary duties and prohibited transactions under ERISA. Although prohibited transactions are outside the scope of this research guide, this source provides an excellent, detailed discussion of ERISA fiduciary duties.
- Employee Benefits by Mary F. Radford
  Call Number: HD4928.N6 R34
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=32573This book, by GSU Law Professor Mary F. Radford, provides an overview of employee benefits law, especially as it applies to the Georgia practitioner.
- ERISA Litigation by Published by the American Bar Association, Joint Committee on Employee Benefits
  Call Number: KF3512.A75 E75 2009
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 2076542This publication reviewing the two-day National Institute offers an approach to ERISA from a purely litigation perspective, emphasizing the practical, not the theoretical. Designed for litigators, benefits practitioners and ERISA specialists who want to enhance their substantive ERISA knowledge; this program will focus on tips, techniques and advice from successful, experienced plaintiff and defense ERISA litigators. Comprehensive course materials will provide a resource for future study.
- Fundamentals of Employee Benefit Programs by Published by the Employee Benefit Research Institute
  Call Number: HD4928.N62 U634 1985
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 30389Fundamentals offers a straightforward, basic explanation of employee benefit programs in the private and public sectors. Written in clear, nontechnical language, this fact-filled reference book covers everything from health insurance to pension plans and from retirement planning to dependent care programs. Chapters review the history of a program, outline its design and structure, and provide sources and key contacts for more information.

Law Review Articles & Other Periodic Sources

As ERISA was enacted in 1974, there are numerous law review and journal articles discussing who is an ERISA fiduciary, what an ERISA fiduciary's duties are, and how an ERISA fiduciary may be held liable for plan losses. A few notable articles are mentioned below.

Edward E. Bintz, *Fiduciary Responsibility Under ERISA: Is There Ever a Fiduciary Duty to Disclose?*, 54 U. Pitt. L. Rev. 979 (1993).

"The Employee Retirement Income Security Act of 1974 (ERISA), as amended, provides a broad federal regulatory scheme governing the operation of privately sponsored employee benefit plans.... This article examines the extent to which a fiduciary duty to disclose such information should supplement ERISA's express reporting and disclosure rules. Parts II and III of the article describe ERISA's express reporting and disclosure rules as well as its fiduciary standards. Part IV examines ERISA's statutory language and legislative history, and proposes a framework for analyzing whether a fiduciary duty to disclose exists in a particular situation. Part V analyzes the case law in four broad areas where plaintiffs have asserted the existence of a fiduciary duty to disclose. Finally, part VI discusses the scope of relief that is available to plaintiffs who successfully assert a cause of action based on a fiduciary's breach of disclosure obligations."

Jeffrey A. Brauch, *The Danger of Ignoring Plain Meaning: Individual Relief for Breach of Fiduciary Duty under ERISA*, 41 Wayne L. Rev. 1233 (Spring 1995).

"This Article analyzes individual claims for breach of fiduciary duty, examining them in light of ERISA's text and legislative history. It concludes that, despite the sympathetic facts underlying many of the cases, courts recognizing this cause of action have erred. They have erred by ignoring the plain meaning of the text and by relying primarily on an erroneous reading of ERISA's purpose and history. In so doing, courts have reworked a complex balance of competing interests that Congress achieved in creating ERISA.

Part II of this Article provides a background of the key principles and issues underlying the dispute over whether individual claims for breach of fiduciary duty should be recognized. Part III describes how courts have decided this issue in recent years. Part IV analyzes these decisions in light of both the statute's text and legislative history."

Deborah A. Geier, *ERISA: Punitive Damages for Breach of Fiduciary Duty*, 35 Case W. Res. L. Rev. 743 (1985).

"In the eleven years since the passage of ERISA, thousands of lawsuits filed under Title I of the Act have resolved many of its interpretive ambiguities. One issue that remains unsettled, however, is whether ERISA permits a plaintiff to recover punitive damages for a pension fund manager's breach of fiduciary duty.

Courts have reached opposing conclusions in answering this question. In *Russell v. Massachusetts Mutual Life Insurance Co.*, the Ninth Circuit held that punitive damages against fiduciaries are contemplated and

justified by the Act, although under very 'limited circumstances.' The Eighth Circuit, in *Dependahl v. Falstaff Brewing Co.*, gave a sweeping statement of the opposite view, saying that 'punitive damages are not provided for in ERISA.' District courts also have split on this issue: some have permitted punitive damage awards in conformity with *Russell*, while others have relied on *Dependahl*, denying personal liability for punitive damages for breaches of fiduciary duty by plan managers. In reversing *Russell*, the Supreme Court left the issue of recovery of punitive damages by a plan unresolved.

This Note analyzes the split between the circuits. It begins by outlining the fiduciary provisions of ERISA as well as the general principles underlying fiduciary duty. It then analyzes the conflicting judicial rationales that led to the split. In particular, this Note examines the plain meaning of the ERISA fiduciary duty provision, the Act's legislative history, the underlying purposes and policies of the Act, and the availability of punitive damages under analogous law. This Note concludes that punitive damages are recoverable under ERISA in suits against individuals based on breach of fiduciary duty."

Joan Gucciardi & Ilene Ferenczy, *Journal of Pension Benefits* (Aspen Publishers).

"This quarterly journal provides pension professionals with new ideas, fresh insights, and expert views on key topics affecting plan design, compliance, and administration. In each issue, the industry's most acclaimed experts contribute regular columns and articles on:

401(k) plans; Retirement plans for tax-exempt organizations; Legal developments; Pension investments; 401(k) investments; Plan administration and design; Pension plan compliance; Pension distributions; Fiduciary issues; Voluntary correction issues; Nonqualified plans

Journal of Pension Benefits will keep you up-to-date on today's rules and regulations and one step ahead of tomorrow's trends. If you administer, design, manage, audit, or invest the funds of pension plans -- or advise clients who do -- you can't afford to miss a single issue."

Morton Klevan, *The Fiduciary's Duty of Loyalty under ERISA Section 406(b)(1)*, 23 Real Prop. Prob. & Tr. J. 561 (1988).

"Tracing the development of the meaning of fiduciary loyalty under ERISA, this article explores the direction and misdirection of the early cases with an eye to proper interpretations in light of Congress' objectives in enacting ERISA."

Judy Bateman Shepura, *Fiduciary Duties under ERISA: Interpretations within the Eleventh Circuit*, 19 Cumb. L. Rev. 131 (1989).

"This Comment focuses on fiduciary responsibilities under ERISA, primarily as reflected in federal district-level and appellate cases within the Eleventh Circuit. Cases outside the Eleventh Circuit are used only in the absence of similar examples from within the Circuit, and they are indicated in the text. Part I explores the major elements that courts use to determine fiduciary status. Part II examines judicial interpretations of substantive fiduciary responsibilities. Part III addresses the arbitrary and capricious test for fiduciaries as plan administrators. This Comment is not a comprehensive survey of the fiduciary's role. Rather, it is intended as a primer to introduce major principles of fiduciary law under ERISA."

Laurence B. Wohl, *Fiduciary Duties Under ERISA: A Tale of Multiple Loyalties*, 20 U. Dayton L. Rev. 43 (1994).

"This Article focuses its attention on the development of [the] ERISA fiduciary principles used by the courts to determine whether a fiduciary in a conflict position has acted on behalf of an ERISA plan with sufficient loyalty and prudence."

Books & Other Nonperiodic Sources

- 401(k) Plans & Intermediate Admin. Topics by Ilene H. Ferenczy, J.D., CPC, APA
  ISBN: 9781935379065
  http://www.asppa.org/Document-Vault/Docs/EE/DC-2-Textbook.aspxThis textbook is the second in a three-volume series, and in addition to being the required reading for the DC-2 examination, it also serves as a useful reference guide for any retirement plan professional's day-to-day activities.
- Advanced Compliance & Administration Topics by Ilene H. Ferenczy, J.D., CPC, APA
  ISBN: 9781935379072
  http://www.asppa.org/Document-Vault/Docs/EE/DC-3-Textbook.aspxThis textbook is the last in a three-volume series, and in addition to being the required reading for the DC-3 examination, it also serves as a useful reference guide for any retirement plan professional's day-to-day activities.
- Employee Benefits in Mergers and Acquisitions, 2009-2010 Edition by Ilene Ferenczy
  ISBN: 0735581991
  http://www.aspenpublishers.com/Product.asp?catalog_name=Aspen&product_id=0735581991Employee Benefits in Mergers and Acquisitions is an essential tool in assisting both benefits and M&A professionals in handling complicated issues that are likely to arise in the wake of a merger or acquisition. It includes legal and tax compliance issues, strategies to avoid costly litigation, and the soundest business practices for administering benefits and compensation plans in a merger and acquisition setting.
- Plan Qualification and Compliance Basics by Ilene H. Ferenczy, J.D., CPC, APA
  ISBN: 9781935379058
  http://www.asppa.org/Document-Vault/Docs/EE/DC-1-Textbook.aspxThis textbook is the first of a three-volume series, and in addition to being the required reading for the DC-1 examination, it also serves as a useful reference guide for any retirement plan professional's day-to-day activities. Each individual chapter includes a review of key concepts and several practice exam questions to help exam candidates assess their knowledge of the material.
- U.S. Master™ Employee Benefits Guide, 2010 Edition by Linda Panszczyk, J. D., CEBS, Melanie King J.D., Tulay Turan J.D.
  ISBN: 9780808022718
  http://hr.cch.com/Products/ProductID-7241.aspNow in its 15th edition, the 2010 U.S. Master Employee Benefits Guide is the ideal reference for HR personnel, benefits professionals, benefits attorneys, payroll managers — or anyone involved in the area of employee health and welfare benefits. This handy, authoritative book discusses pertinent federal tax and employment laws as they involve employee benefits plans. Part of CCH's "Master Guide" series, the Master Employee Benefits Guide provides straight-forward coverage of important employee benefits issues. It also offers helpful insights into the issues that confront HR and benefits personnel on a daily basis. Features explanations of the many employee benefit changes arising out of recent law and regulatory changes. This product also addresses employee benefits communication, management, reporting and disclosure, and other compliance issues. Cross-references to the Internal Revenue Code and Regulations, ERISA and its regulations, and CCH's Employee Benefits Management product. Time-saving features include compliance documents and checklists.

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Federal Agencies, Associations & Interest Groups

Federal Agencies

Below are the relevant federal agencies in the area of employee benefits.

- Employee Benefits Security Administration
  http://www.dol.gov/ebsa/

The EBSA administers and enforces the fiduciary, reporting and disclosure provisions of Title I of ERISA. The EBSA "is committed to educating and assisting the 150 million Americans covered by more than 708,000 private retirement plans, 2.8 million health plans, and similar numbers of other welfare benefit plans holding over $5 trillion in assets; as well as plan sponsors and members of the employee benefits community. EBSA balances proactive enforcemement with compliance assistance."

- Internal Revenue Service
  http://www.irs.gov/
  According to Title II of ERISA, the IRS has the "primary responsibility for participation, vesting and funding issues of ERISA." The IRS website, located under "Retirement Plans Community" on the homepage, contains useful information for benefit practitioners, plan participants/employees, and plan sponsors/employers. The site also provides links to published IRS guidance, such as regulations and revenue rulings, and retirement plan forms, publications, and products.

- Pension Benefit Guaranty Corporation
  http://www.pbgc.gov/
  PBGC is a federal corporation created by ERISA. It protects the pensions of more than 44 million American workers and retirees in more than 29,000 private single-employer and multiemployer defined benefit pension plans. PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums set by Congress and paid by sponsors of defined benefit plans, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies.
  The PBGC website provides answers to common questions, such as: "How pension plans end," "What to do if your pension plan ends," "How to check if [PBGC] insure[s] your pension," and "How PBGC operates." The PBGC does not maintain records of specific plans, plan participants, or plan benefits; the PBGC only gathers this information when a plan ends and PBGC takes responsibility for benefit payments.

Interest Groups

- American Benefits Council
  http://www.americanbenefitscouncil.org/
  The American Benefits Council (the Council) is recognized as the preeminent advocate of employer-sponsored benefit programs in Washington, D.C. The Council's mission is to be the most effective advocate for voluntary private employee benefits. The Council initiates and champions legislation and regulations favorable to members' needs and interests, and influences policy development within Congress and the White House and executive branch agencies.
  According to the American Benefits Council website,

  "The American Benefits Council (the Council) is recognized as the preeminent advocate of employer-sponsored benefit programs in Washington, D.C.
  Our members either sponsor directly, administer or service retirement, health and stock compensation plans covering more than 100 million Americans.
  - We are major corporations sponsoring comprehensive and diverse benefit plans.
  - We are professionals in the benefits field with expertise in investments, retirement, health insurance, accounting, actuarial science, banking, law, and benefits consulting who provide service and support to corporate benefit plan sponsors.
  - The Council initiates and champions legislation and regulations favorable to our members' needs and interests, and influences policy development within Congress and the White House and executive branch agencies.
  - We fend off policy proposals that add burdens, liabilities and costs for the employer plan sponsor community.
  We serve as a technical resource on benefits issues for lawmakers, the media and other industry trade associations. We also lead other public policy organizations in developing and communicating a collective business community position and forge alliances on benefits issues.
  - We are an active participant as a "friend of the court" in judicial cases affecting benefits.

  The Council is the only broad-based employee benefits organization that sponsors a political action committee (PAC).
  - The PAC helps elect and reelect friends of the voluntary private employee benefits system.
  - The PAC's Board of Directors, with input from our members, determines which campaign contributions will best further the Council's objectives."

Public & Private Associations

Below are two associations involved in the employee benefits area. Each may have specific involvement and provide specific information on a fiduciary's breach of fiduciary duties; both provide valuable general information on employee benefits law.

- American Bar Association Joint Committee on Employee Benefits
  http://www.abanet.org/jceb/
  The ABA Joint Committee on Employee Benefits (JCEB) coordinates the activities of the employee benefits committees of six sections. Those activities include CLE programs and annual meetings with federal agency officials that are reported as a series of questions and answers from each agency.

- American Bar Association Section of Taxation
  http://www.abanet.org/tax/
  The Section of Taxation was established in 1921 as a five-man ABA Special Committee on Internal Revenue and Its Means of Collection. The Section's focus has remained constant since that time: to find innovative ways to improve federal tax law and its administration.
  According to the ABA Section of Taxation website,

  "The Section of Taxation was established in 1921 as a five-man ABA Special Committee on Internal Revenue and Its Means of Collection. The Section's focus has remained constant since that time: to find innovative ways to improve federal tax law and its administration. Both the Section and the law have changed drastically. Landmarks for the Section include having been renamed the ABA Special Committee on Federal Taxation in 1924, and, in 1939, after much debate, becoming the ABA Section of Taxation.

  As of March 31, 2009, Taxation had 16,325 lawyer members, 474 associates, and 5,266 law student members for a total of 22,065 members. Regular annual dues in 2009-10 were $60 and total dues revenue for the year was $960,000.

  The Section of Taxation is dedicated to creating and maintaining an equitable tax system that can be fairly administered. The Section's work supports the integrity of the nation's voluntary system for tax reporting and payment. It evaluates the "simplicity, enforceability, fairness and probable effect of the tax system on economic, business and personal behavior...." However, Taxation does not speak on political and economic aspects of tax policy, such as special tax treatment designed to stimulate the economy, or on shifts in the tax burden among income groups. The Section's top projects include Tax Shelter Registration/Circular 230 and Tax Simplification issues, including repeal of the Individual Alternative Minimum Tax, simplifying Definition of Child, and addressing the myriad phase-out provisions of the tax code."

Nonprofit Organizations

- Employee Benefit Research Institute
  http://www.ebri.org/
  The mission of the Employee Benefit Research Institute (EBRI) is to contribute to, to encourage, and to enhance the development of sound employee benefit programs and sound public policy through objective research and education. EBRI is a nonprofit, nonpartisan organization established in 1978.
  According to the EBRI website,

  "EBRI was founded in 1978 with a declaration of three principles:

  - Employee benefit plans serve an essential function in the United States economy by providing citizens with opportunities to achieve financial security.
  - An ongoing need exists for objective, unbiased information regarding the employee benefit system, so that decisions affecting the system may be made based on verifiable facts.
  - The members of the Institute determined that their common business interests will be furthered by having the Institute develop and disseminate such information. In all its activities the Institute shall function strictly in an objective and unbiased manner and not as an advocate or opponent of any position.

  EBRI was founded on four points of purpose:

  - To conduct, and to encourage others to conduct, research relating to employee benefit plans, whether governmental, private, or otherwise.
  - To assemble and disseminate information on employee benefits, by publication or otherwise, to the general public, including interested organizations, both private and governmental.
  - To sponsor lectures, debates, roundtables, forums, and study groups on employee benefit plans.
  - To carry out all such activities as a research and educational organization."

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