

Hiring the right advisor for your company's 401(k) retirement plan is one of the most critical decisions you will ever make as a Plan Sponsor.

Contrary to popular view, the main purpose for hiring a retirement Plan Advisor is not to pick stocks and funds or chase the highest rate of returns. It is the knowledge of *process* by which investments are selected and fiduciary standards are put into practice that makes good 401(k) advisors indispensable.

You will be choosing your closest and most trusted ally to protect the best interests of your plan's participants, and therefore, to manage your monumental fiduciary liability as a Plan Sponsor.



### Minimize Your Risk

The right Plan Advisor candidate has the comprehensive background and team to minimize the risk of huge losses, including individual out-of-pocket penalties, arising from:

- Lawsuits.
- Accusations of mishandling.
- ERISA and Department of Labor audits and investigations.
- Penalties for noncompliance.

### The Top Five Reasons Plan Sponsors Hire 401(k) Advisors

At the end of the day, what you want to assess is how well your advisor will help you:

- Offload or limit your fiduciary liabilities.
- Understand your fiduciary responsibilities.
- Help your plan participants understand their options, benefits and how to make changes.
- Help your plan stay updated and comply with government regulations
- Help you structure a solid plan and adhere to it, as mandated by law.

### Highest Fiduciary Comfort Zone - ERISA 3(38)

Your 401(k) Plan Advisor can be a broker or a registered investment advisor, but brokers are not on the hook to be a fiduciary to you unless their boss (the broker-dealer) allows them to accept that liability.

*The safest comfort zone for a Plan Sponsor is to bring in a registered investment manager qualified under ERISA regulations 3(38). Because 3(38) investment managers assume discretion and control of plan investments, they will assume nearly all fiduciary liability in this regard.*

### Get It in Writing

In either case, you will want your potential advisors to spell out exactly their fiduciary levels, whether they will assume a 3(38) role, a co-fiduciary role, a fiduciary role under 3(21), either full-scope or limited-scope, or any combination, under an ERISA benefits plan.

### Interview Questions for Potential 401(k) Retirement Advisors

Here is a checklist of some interview questions you might want to ask:

- How often do you hold regular meetings with Plan Sponsors?
- How would you help develop or review our Investment Policy Statement (IPS)?

- How often would you check that our investment options line up with our IPS?
- How will you provide investment education for plan participants?
- How would you help us meet new 408(b)(2) fee disclosure rules?
- How often do you review fees of the Plan's fund managers?
- What process do you have for disclosing management fees to participants?
- What is your process for ensuring investment fees are "reasonable" as mandated?
- Who are your other service providers that would work with us?
- What would be the exact level of the provider fiduciary responsibilities/liabilities?
- What are your policies for handling rollovers brought by previous plan participants?
- What expertise do you or your providers have on ERISA and plan administration?
- There are so many fund share classes, how do you evaluate them for different plans?
- Would you bring in a Third Party Administrator (TPA)?
- Would the TPA provide mostly basic administrative services, or do they possess more specific expertise, such as analyzing plan designs to save taxes for highly compensated employees?
- Would the fees for the TPA's services be fair and reasonable per mandates?

### Evaluate Your Advisor's Resources

The field of investments is full of licenses and certifications. Some advisors are simply insurance licensed, and some have passed the "Series 6" exam that is administered by FINRA (Financial Industry Regulatory Authority), which allows the individual to register as a limited representative, and sell mutual funds and variable annuities. Still others have passed FINRA's "Series 7" exam for general securities, stocks and bonds. More experienced financial advisors may obtain the CFP or Certified Financial Planner designation, the AIF, or Accredited Investment Fiduciary designation, or the QPFC, or Qualified Plan Financial Consultant designation. It is a rare and valuable asset to have financial expertise and knowledge of ERISA in the same advisor. That said, a good advisor does not have to be an expert in all things ERISA, as long as they are professionally respected by their peers and consulting long enough to have built relationships with or employ providers who are qualified experts.

It is invaluable when a conversation arises about how to handle your unique, more complex situations and your advisor can quickly and confidentially call on a trusted ERISA attorney, TPA or Auditor to weigh in for informed decision making.

### Summary: Hiring the Right 401(k) Plan Advisor Helps Plan Sponsors Sleep at Night

Picking stocks is a valuable skill, but not the most crucial area for Plan Sponsors to evaluate a candidate for Advisor. There are many good tools and guides for prudent investing, and most employees today opt to choose their own investment mix within your plan's options. It is the protection of all involved from potentially catastrophic fiduciary liability that should be the guiding light for finding the best 401(k) advisor for your company's retirement plan.

For more information on how the right advisor will benefit you as a fiduciary and your responsibilities as a fiduciary of a retirement plan, read our recent articles, [Are you a Fiduciary](#), [Fiduciary Responsibilities for Benefit Plans Under ERISA](#), and [Types of ERISA Fiduciaries](#).

For a guide on how to hire service providers and to see if your plan is meeting today's operating standards, see our recent article, [Fiduciary Checklist for Hiring Service Providers](#).

As always, EJReynolds is available to help you understand your Fiduciary responsibilities and risks.