

[Home](#) > [Plan Administration](#) > Know Your Role: Am I a "Settlor" or a "Fiduciary"?

Posted on March 8, 2012 by

[Know Your Role: Am I a "Settlor" or a "Fiduciary"?](#)

- [Email This](#)
- [Print](#)
- [Comments](#)
- [Trackbacks](#)
- [Share Link](#)

When making decisions about benefit plans, plan sponsors should at least take some time to consider what role they are playing. I am working with a company that is terminating its health plan and the distinction between "settlor" functions and "fiduciary" functions became very significant. So I thought I might share some thoughts on the topic.

Settlor functions are those typically related to plan design, such as establishment of a plan, determination of who the plan will cover and designing the benefit offerings. The creation or termination (or even amendment) of a plan is a settlor function. This is important because settlor functions are not subject to the same fiduciary status when making these decisions. For instances, the decision to amend or terminate a plan is a settlor function that does not give rise to a claim for breach of fiduciary duty. Similarly, the decision about what class of employees to make eligible for coverage would be a settlor function. You might have qualification issues and have to comply with IRS regulations, but the decision about design is not necessarily a fiduciary one.

Fiduciary functions tend to be the "administrative" aspects of the plan. Fiduciaries exercise control or management over plan assets and have discretionary authority over the plan operation. So while the decision to terminate the plan may not be a fiduciary function, the way that you administer the termination would be. Likewise, while a decision to offer coverage to a specific group of employees may not be a fiduciary function, denying eligibility to an employee who thinks they are eligible would be. Fiduciary actions are governed by ERISA standards, while settlor activities are generally not. I say "generally" because often times the decisions can be a mix of both settlor and fiduciary functions and it is important to know which hat you are wearing for each decision.

And it is the "mix" that is important. When making decisions related to creating a plan, amending a plan or terminating a plan, it is important to separate those decisions made or actions taken in a settlor capacity from those decisions made or actions taken in a fiduciary capacity. That way there is a clear delineation of what role you were playing at each point. When you are acting as both a fiduciary and a settlor, your actions will be given very close scrutiny by a court if they are challenged, so give them that same close scrutiny before you make them. It saves grief in the long run.

Tags: [Plan Administration](#), [Retirement Plans](#), [Welfare Plans](#)

Trackbacks (0)

Comments (0)

Send To A Friend Use this form to send this entry to a friend via email.

Email this entry to:

Your email address:

Message: (optional)

Email This Entry