

**The 11 Biggest Legal Mistakes**

- Inconsistency in Plan Documentation Trust
  - Trust Agreement Purpose
  - Plan Document Content
  - CBA or Employer Adoption Agreement Must Be Consistent
  - Other Policies, Procedures and Board Records Must Also Conform

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**The 11 Biggest Legal Mistakes**

- Providing Retiree Health Coverage Outside a Trust
  - Accounting Rules Re: Retiree Medical Liability
  - Impact On Corporate Financial Statements
  - Impact On Retiree Coverage
  - Use of 501 (c)(9) Trust ("VEBA")
  - Scope of VEBA Benefits
  - Advantage of VEBA Retiree Coverage
  - VEBA Requirements for Tax Exemption

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**The 11 Biggest Legal Mistakes**

- Ineffective Contribution Collection Procedures
  - Need for Reasonable, Systematic and Diligent Collection Process
  - Written Procedures and Forms are Critical
  - Enforcement Must Be Uniform
  - Administrator Should Have Limited and Defined Discretion
  - Instructional/Random Payroll Record Review Procedure is Important

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### The 11 Biggest Legal Mistakes

- Inadequate Documentation of Fiduciary Decision Making
  - Meeting Minutes Must be Comprehensive
  - Action of Sub-Committees Should Be Included in Minutes and Ratified
  - Discretionary Decisions Should Be Made By Fiduciary or Appropriate Consultants
  - Document Distribution Should Be Limited
  - Document Retention and Destruction Policy

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### The 11 Biggest Legal Mistakes

- Failure to Properly Oversee and Delegate Responsibility to Consultants
  - Utilization of Effective RFP Process
  - Avoidance of Overlap in Functions
  - Specificity in Contractual Scope of Services
  - Development of Performance Evaluation Criteria
  - Fixed Term Consulting Agreements

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### The 11 Biggest Legal Mistakes

- Lack of Organizational Objectives
  - Value of Strategic Planning
  - Coordination of Consultants' Efforts
  - Danger of *Ad Hoc* Decision Making
  - Documentation of Goals and Objectives
  - Creation of Organizational Benchmarks
  - Delegation of Responsibility for Oversight

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**The 11 Biggest Legal Mistakes**

- Failure to Detect Participant Fraud and Abuse
  - COBRA Problems
  - Student Status Verifications
  - Domestic Partner Problems
  - Identify Theft
  - Fraud Detection Through Audit
  - Impact on Carrier Relationships and Claims Experience
  - Development of a Fraud Policy

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**The 11 Biggest Legal Mistakes**

- Self Management of Plan Assets
  - Potential for Personal Liability Exposure
  - Role of Qualified Investment Manager
  - Effective Delegation of Fiduciary Responsibility
  - Review of Investment Performance

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**The 11 Biggest Legal Mistakes**

- Observance of Proper Arrangements with Parties in Interest
  - Avoidance of "Self Dealing"
  - Avoidance of Prohibited Transactions
  - Arms-Length Contractual Arrangements
  - Annual Audit Scrutiny
  - Continuing Oversight of Internal Controls
  - Use of Independent Fiduciary

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**The 11 Biggest Legal Mistakes**

- Inadequate or Incomplete Insurance Coverage
  - Directors and Officers Coverage Limitations
  - Fiduciary Responsibility Insurance Policy Provisions
  - FRIP Waiver of Recourse Coverage Importance
  - Employee Practices Liability Insurance
  - Fidelity Bond
  - Role of Insurance Broker

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**The 11 Biggest Legal Mistakes**

- Ineffective Dispute Resolution Procedures
  - Trustee Deadlock Procedures
  - Participant Benefit Procedures
  - Employee Claim Procedures
  - Utilization of Arbitration Mechanism

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**The 11 Biggest Legal Mistakes**

- Conclusion
  - Trustee Education Is Critical
  - Experience Matters

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