


**Fiduciary Training for
Insurance
Committee Members**

**California Public Employers Employees Health Care
Coalition (CPEEHCC) Conference
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*Michael F. Doyle, Executive Liability Practice Leader
Ronald E. Riley, CEBS – Executive Vice President
HUB International of California Insurance Services, Inc.*

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ERISA – Employee Retirement Income Security Act

- federal law passed by Congress in 1974
- regulated by federal statute vs. laws of 50 states
- statute preempts virtually all state laws and regulations
 - * preempts - breach of contract, fraud, misrepresentation, other tort claims
 - * does not preempt – laws regulating insurance, securities (including federal), banking, federal employment

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ERISA – protects employees from unfair employee benefit plan practices

- protects employee benefit plan participants
- standardize the regulations of employee benefit plans
- establishes minimum standards
 - * administering plans
 - * disclosing financials & other information
 - * processing benefit plans & claims

Note: Fiduciaries settled for \$145,000 based on inadequate documentation and not following life insurance enrollment procedures

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ERISA – Employee Retirement Income Security Act

- applies to any employee benefit plan
 - * established or maintained by any employer or employee organization
 - engaged in commerce or in any industry or activity affecting commerce
 - * employer has authority to control, manage the operation, administer their employees' pensions plans
 - * employer is a fiduciary & held to a high standard of care
- eliminates conflicting state & local laws & regulations

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ERISA – Types of Plans

- Self funded / self insured plan
 - * employer pays benefits directly
 - * use general assets or trust fund (for that purpose)
 - * full benefit of ERISA preemption (federal law)
 - * not deemed an insurance company & regulated
 - * pension plans / 401(k) plans
- Unfunded / fully insured plan
 - * employer buys an insurance policy
 - * sometimes receives the benefit of ERISA preemption
 - * medical, life insurance, other employee benefit plans

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ERISA – Employee Retirement Income Security Act

- Non-ERISA plans
 - * vacation pay, health club benefits, family leave, workers' compensation, employee benefit plans
 - * non-ERISA plan sponsors
 - Government Employee Benefit Plans
 - Public employers
 - Churches
 - * never receives the benefit of ERISA preemption (not subject to federal law)

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ERISA – Who Is A Fiduciary?

- trustees, directors, officers
- individuals exercising discretion, authority or control over plan administration
- persons who select members of the Board of Trustees
- anyone who performs a fiduciary act

Then Who Is Not a Fiduciary?

- investment advisers, auditors, attorneys, consultants
- third party administrators (TPA) - debatable

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ERISA – Fiduciaries Obligations

Obligations of a Fiduciary

- act with “care, skill, prudence and diligence”
- under the circumstances then prevailing
- that a prudent person acting in a similar capacity would follow in a similar situation
- must exercise a duty of prudence and loyalty

Note: \$55,000 defense costs for Fiduciaries changing medical insurance carriers which offered reduced coverage.

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ERISA – Fiduciaries Obligations

Prudence – Duty of Care for Fiduciary

- standard – “prudent” fiduciary (not lay person)
- experienced in dealing with similar enterprises/matters
- this is a higher standard – requires use of experts
- provide a diverse selection of benefit plans
- create plan document that confirms management of plans assets

Note: New stock certificates were established and financed incorrectly, violating IRS tax code. Fines, penalties and costs exceeded \$350,000.

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ERISA – Fiduciaries Obligations
Prudence – Duty of Care for Fiduciary (continued)

- Fiduciaries may delegate fiduciary duties
 - * administration
 - * health & welfare benefits
 - * investment management
- Fiduciaries are not permitted to delegate
 - * investment policy
 - * selection of vendors and providers
 - * strategic planning
- prudent process could be more important than result
- fiduciaries must pursue ongoing education & training

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ERISA – Fiduciaries Obligations
Loyalty – Standard of Care for Fiduciary

- Fiduciaries must act solely for the benefit of the plans, beneficiaries
- potential Loyalty downfalls
 - * conflicts of interests
 - * self-dealing, self enrichment
 - * self-benefiting transactions
 - * benefiting friends, others when not necessary

Personal Liability

- alleged violations of these obligations expose fiduciary to personal financial liability (personal assets)

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Insurance Options

- Fiduciary Liability Insurance
 - * covers liability of the fiduciaries for alleged breach of their fiduciary duty regarding the plans
 - * broadest liability insurance available
 - * must be formally submitted, quoted, accepted
- Employee Benefit Liability Insurance
 - * covers liability in the administration (only) of plans
 - * does not cover any management, control of investment plans - pension / 401(k)
- Fidelity (Theft, Dishonesty) Insurance
 - * covers theft of plan assets by an employee
 - * ERISA requires this insurance - \$500,000 each plan (non ESOP)

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- eliminate conflicting state and local regulations

Note: \$145,000 settlement for inadequate documentation and following life insurance enrollment procedures

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Trustees – Financial Responsibilities

- must understand their plans
- periodic review of financial reports, explanations if necessary
- review Annual Auditors report
- monitor changes in economy, investments, insurance trends and carriers
- control expenses and document decision making process
- hold vendors accountable for services provided and competition
- comply with laws – HIPAA, MHPA, MHGRA

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Section 403 (b) Internal Revenue Code

- final regulations issued 7/26/07
- revisions effective 1/1/09
- drafted by Treasury Dept and IRS
- govern retirement plans for employees
 - * certain tax exempt organizations
 - * public educational organizations
 - funded by insurance annuity contracts
 - funded by custodial accounts invested in mutual funds
- 403 (b) plans must be regulated by ERISA
 - * exception, must have written plan document
 - contain forms and operation requirements

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Governance

- effective meetings of the Board of Trustees
 - * meet regularly
 - * pre-set agenda's with documentation
 - * record discussions, decisions, action items
 - * calendar action items & person for follow-up
- select qualified persons to join the Board, looking for diversity in expertise, industries, professions
 - * assign projects to committee's
 - * critique findings and recommendations
 - * utilize in presenting to Board

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Governance

- establish formal policies and procedures
- review periodically with Board and, if appropriate, outside professionals – consider revisions
- educate Board, bring in experts to present on topical issues
- have General Counsel discuss Trustee's legal liability to the plan, participants, beneficiaries
- review documents, records, mnotes, action items, calendars, memos periodically

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Governance

- delegate responsibilities to management, employees, committees
- require accountability
- expectations must be clear, concise & understood
- encourage discussions, debate, varied opinions
- single voice on final decisions, plan purpose
- always be improving the plans, programs

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QUESTIONS.....

Thank you for this opportunity!

Contact us at:
Michael F. Doyle
(310) 916-8119
michael.doyle@hubinternational.com

Ronald E. Riley
(714) 210-1554
ron.riley@hubinternational.com

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