Retirement Solutions

Fidelity Bonds: Insurance Coverage Required by ERISA

ERISA fidelity bonds – commonly known as fidelity bonds – are a type of insurance to help replace lost funds that are stolen from a company's 401(k) plan. They protect against physical or financial losses that might affect an employee's ability to cash in on their retirement benefits.

The Employee Retirement Income Security Act of 1974 (ERISA) requires every person who handles funds or other property for 401(k) plans to be covered by a fidelity bond.[1] This form of insurance protects 401(k) plan participants from financial losses incurred by dishonest or fraudulent actions on the part of persons who "handle" plan funds.

If an administrator or trustee – or anyone serving in a fiduciary capacity for a 401(k) plan – has misappropriated or embezzled funds from the 401(k) plan, a claim against the fidelity bond will cover those financial losses up to the coverage limit.

There are three parties to a fidelity bond: the insured, the insurer, and the covered. The 401(k) plan is the insured, the surety company is the insurer, and the plan official is the covered. As the insured, a 401(k) plan can make a claim on the bond when a loss occurs.

All 401(k) plans must be protected by a fidelity bond.

ERISA makes it an unlawful act for any person to "receive, handle, disburse, or otherwise exercise custody or control of plan funds or property" without being properly bonded. If the activities performed by an individual connected with plan management could potentially result in a loss of funds from the program, that person needs to be bonded. The most common kinds of activities that these individuals – called "plan officials" – are responsible for include:

- Physical contact with cash, checks or other plan property.
- Power to transfer or negotiate plan property for a price.
- Power to disburse funds, sign checks or produce negotiable instruments from the plan assets.
- Decision-making authority over any individual described above.

Wondering about PEPs and fidelity bonds? See page two for more information.

1. Employee benefit plans that are exempt from the bonding requirements:
   - Plans that are completely unfunded, meaning benefits are paid only from the general assets of a union or employer.
   - Plans not subject to Title I of ERISA. This generally means plans that do not cover any employees other than owners and their spouses.

Fidelity bond coverage requirements.

Typically, ERISA requires that each plan official carry fidelity bond coverage equal to:

- At least 10 percent of the plan assets they handle,[2] and
- A minimum of $1,000 and a maximum of $500,000 (or $1 million for retirement plans that hold company stock).

The fidelity bond must cover the 401(k) for the entire year and can't have a deductible – in other words, it must cover the first dollar of a loss. For new plans, estimated plan contributions are used to determine the bond amount but will be at least $1,000. There is no small plan or small amount exception to the bonding requirement.

Pooled Employer Plans and Fidelity Bonds

Q. Does The Standard hold a fidelity bond for its PEP clients?

A. Yes, The Standard is covered by a fidelity bond for our pooled employer plans. Standard Retirement Services, Inc. serves as our PEP's Pooled Plan Provider. In that capacity, Standard Retirement Services is covered under our corporate bonding and risk management program consistent with any bonding obligations under ERISA.

Q. Do participating employers of a PEP need a fidelity bond?

A. The SECURE Act does not specifically require a participating employer in a pooled employer plan to obtain a fidelity bond while participating in the PEP; however it also does not modify the basic ERISA fidelity bonding requirements.

Nonetheless, certain responsibilities and liabilities – whether administrative or investment related – remain at the participating employer level, even in a PEP arrangement. Obtaining a bond or fiduciary liability insurance can provide additional protection to an employer participating in a PEP.

For example, The Standard, as named pooled plan provider plan administrator, is responsible for many of the administrative tasks, such as reviewing approving distributions and monitoring for late contributions. An employee of the participating employer could embezzle participant deferrals after they are withheld through payroll but before they are deposited to the plan. The employer would then be responsible for making the contribution to the plan even if the amounts are not recovered from the employee. The participating employer may wish to have a fidelity bond to cover such losses if that situation occurred, since this type of loss would not otherwise be covered or reimbursed to the employer.

2. At the beginning of each calendar year.

A fidelity bond differs from fiduciary liability insurance.

While a fidelity bond insures a 401(k) plan against losses due to fraud or dishonesty by persons who handle plan funds or property, fiduciary liability insurance insures plan fiduciaries in case they fail to meet their fiduciary responsibilities. A fidelity bond is required by law, whereas fiduciary liability insurance is not.

There are substantial risks associated with not meeting ERISA's bonding requirements.

401(k) plans must report the dollar amount of their fidelity bond on their annual Form 5500. The government reviews these filings to confirm sufficient bonding. Failing to report a sufficient bond on the Form 5500 can trigger a plan audit. More importantly, failure to have a bond is a fiduciary breach and 401(k) fiduciaries can be held personally liable for any losses due to fraud or dishonest practices that would have been covered by the ERISA fidelity bond.

Fidelity bonds are affordable and easy to purchase.

Fidelity bonds can be obtained through a surety or reinsurer that is named on the Department of the Treasury's Listing of Approved Sureties.

Talk to your advisor about obtaining the necessary protection for your 401(k) plan. Your plan advisor can connect you with the right resources to obtain a required fidelity bond or optional fiduciary insurance.

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The Standard is the marketing name for StanCorp Financial Group, Inc., and its subsidiaries. Standard Retirement Services, Inc., provides financial recordkeeping and plan administrative services. Standard Insurance Company and Standard Retirement Services, Inc., are subsidiaries of StanCorp Financial Group, Inc., and all are Oregon corporations.

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