

Group Insurance Board Member Fiduciary Training

Item 4 - Group Insurance Board

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Informational Item Only

No Board action is required

Outline

1. Background
2. Core Fiduciary Duties and Examples
3. Fiduciary Liability
4. Practical Steps for Exercising Fiduciary Duty

Origin of Fiduciary Duties

- Common law of Trusts
- Employee Retirement Income Security Act (ERISA)
- ERISA is not directly applicable to governmental plans but viewed as best practice
- Wisconsin state law: (1) the Uniform Fiduciaries Act; (2) the Uniform Prudent Investor Act; (3) Chapter 40 provisions

The Department of Employee Trust Funds (ETF) Purpose

[A]id public employees in protecting themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident [...]

Wis. Stat. § 40.01 (1)



Who is a fiduciary?

- Named trustees
- Individuals with discretionary authority or control over the administration of plan assets
- Group Insurance Board members are named fiduciaries:

May take any action as trustees which is deemed advisable and not specifically prohibited or delegated to some other governmental agency, to carry out the purpose and intent of the group insurance plans provided under this chapter [...]

Wis. Stat. § 40.03 (6)(d)

Core Fiduciary Duties

1. Duty of Loyalty
2. Duty of Impartiality
3. Duty of Prudence, and
4. Duty to Follow Plan Documents

Duty of Loyalty



- The “exclusive benefit” rule—requires acting solely in the best interest of plan participants and beneficiaries. Wis. Stat. § 40.01 (2)
- Prohibits Board members from participating in negotiations or decisions when they have a financial interest. Wis. Stat. § 40.01 (3)

Duty of Loyalty— Example



Example: Impressed with the State Group Health Insurance Program (GHIP), a new Group Insurance Board member would like to study whether a similar health insurance program might help small businesses in Wisconsin. She asks if it would be possible to conduct such a study using funds from the GHIP reserve.

Answer: No, using assets from the GHIP reserve to conduct a study to benefit individuals who are not state health plan participants would violate the exclusive benefit rule. The exclusive benefit rule requires that GHIP assets only be used for participants in that particular program.

Duty of Impartiality



- Balance potentially conflicting interests among different groups of participants
- Board members may convey the views of a sub-group of participants but may not favor that group in making decisions

Duty of Impartiality— Example



Example: A Group Insurance Board member is an employee of a public school district. Based on his work, he is concerned a new benefit offering under consideration by the Board may negatively impact teachers. He wonders whether to express his concern since Board members must act for the benefit of all plan participants.

Answer: The Board member may and probably should share his view that the new benefit offering may negatively impact teachers with the Board. Doing so could enrich the discussion and assist the Board in making an informed decision.

Duty of Prudence



- Requires acting with the care, skill, and diligence that a reasonable person would use in the same circumstances:
 - Making reasonable inquiries prior to issuing a decision;
 - Weighing all relevant information reasonably available; and
 - Not closing one's eyes to red-flags
- May rely on the advice and reports of experts

Duty of Prudence— Example



Example: After an RFP process was completed, Group Insurance Board members reviewed a memo in which the Evaluation Committee recommended Vendor A. A Board member noted that Vendor B could offer services at a lower cost, but with a lower level of customer service. The Board member wondered if they needed to choose Vendor B solely based on the lower cost.

Answer: No, the Board member does not need to choose Vendor B based solely on the lower cost. Demonstrating prudence requires a weighing of all the relevant factors available.

Duty to Follow the Plan Document

- Wis. Stat. § 40.03 (6) provides the powers and duties of the Group Insurance Board
- For guidance, review the [Group Insurance Board Governance Manual](#) and [Reference Manual](#) on ETF's website
- Includes policies adopted by the Board such as reserve policies for the Income Continuation Insurance Program, the Group Health Insurance Program, and the Group Life Insurance Program

Fiduciary Liability

- Wis. Stat. § 40.01 gives ETF participants the right to test whether Board members have upheld their fiduciary duties
- 2006 Wisconsin Attorney General Opinion concluded that Board members are entitled to indemnification and a limitation on damages of \$250,000
Wis. Stat. § 893.82 (6) & Wis. Stat. § 895.46
- Two most prevalent types of cases: (1) reasonableness of fees; and (2) data breaches

Practical Steps for Exercising Fiduciary Duty

1. Be reasonably informed about the group insurance programs the Board oversees and ETF's policies and procedures by reviewing Board materials
2. Ask questions of ETF personnel to ensure Board decisions are being properly and effectively implemented
3. Make suggestions or pose thoughts and ideas about how to improve the group insurance programs, or ETF's policies or procedures
4. Receive regular updates from ETF on the group insurance programs and ETF practices
5. Document the path to making decisions and the reasons for decisions

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Questions?

Thank you



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