



Tonry Topics

ERISA BONDS

In 1974, the Employee Retirement Income Security Act (ERISA) was enacted to regulate most types of employee benefit plans. This Act requires that a fidelity bond be in place to cover the fiduciary and those persons who handle funds or other property of such a plan.

According to the Act, the amount of coverage necessary for each plan is no less than 10 percent of the amount of plan funds handled. There is a \$500,000 maximum bond amount and a \$1,000 minimum. The amount of the minimum required bond is fixed at the beginning of each fiscal year of the plan. Higher limits can be purchased.

Under ERISA, a "fiduciary" is defined as a person who "(i) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of such plan..." (ERISA, Sec. 412, U.S. Code 1002(21)(A)).

ERISA bonds are intended to protect retirement plans from fraud and dishonesty committed by individuals who are associated with them. The term "fraud or dishonesty" includes such events as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or other fraudulent or dishonest acts.

Defined Benefit Pension Plans, Money Purchase Pension Plans, Profit Sharing Plans, 401 (K) plans, stock bonus plans, employee stock ownership plans (ESOPs) and Keogh or H.R. 10 plans that have employee participants

are among the types of retirement plan which are required to have ERISA Bonds.

ERISA Bonds fall into two categories:

1. ERISA Bonds which respond to claims involving the insured's own employee benefit plans.
2. Advisors ERISA Bonds that cover fiduciaries for claims involving client employee benefit plans. These bonds are required for Investment Advisors, Brokers, and Fiduciaries who provide plan or investment services for their clients. Higher limits may be required.

What's the difference between an ERISA bond, a fidelity bond, and a fiduciary bond?

ERISA bonds are essentially amended fidelity bonds. All fidelity bonds respond to claims involving dishonest acts on the part of the employer or employees. The ERISA bond, sometimes referred to as a "fiduciary bond", pays claims directly to the plan participants. The fidelity bond pays the claims of the firm which arise from the dishonest acts of the firm's employees.

An ERISA Bond is NOT

- **Fiduciary Liability Insurance** - Fiduciary Liability insurance is designed to protect fiduciaries who, although acting in good faith, violate the complex fiduciary rules as expressed in federal rules, regulations, and court rulings. Fiduciaries also need additional protection from liability for acts of co-fiduciaries, especially where a fiduciary should have known of the breach by a co-fiduciary and failed to remedy the breach. Fiduciary liability insurance is a sub-category of errors & omission insurance, and provides additional coverage against a breach by any plan fiduciary. This coverage is not the same as provided by an ERISA bond because it does not insure against criminal acts on the part of a plan fiduciary.



- **Employment Practices Liability Insurance** - Employment Practices Liability Insurance (also known as EPLI and Investment Adviser EPLI) addresses claims made by employees, former employees or potential employees concerning discrimination (age, sex, race, and disabilities), wrongful termination, sexual harassment, and other employment-related allegations. It covers the firm, its directors, officers, employees and former employees.

event that has or could result in the fraudulent use of personal identification.

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- **Errors and Omissions Insurance** - Errors and Omissions insurance (also known as E&O insurance) protects companies, its officers, directors and employees in the



event they are sued by clients for any actual or alleged negligent act, error or omission committed in the scope of performing services. Coverage includes legal defense costs even where allegations are baseless. ERISA and fiduciary bonds cover against losses due to a criminal act. The errors & omissions insurance provides employers with coverage against losses due to any actual or alleged negligent acts. Errors & Omissions Insurance is not synonymous with Directors and Officers Liability Insurance.

- **Directors and Officers Liability Insurance** - Directors and Officers Liability Insurance (also known as D&O insurance) indemnifies directors and officers of a firm if they are sued by stockholders, employees, clients and others in conjunction with the performance of their duties. Coverage extends to claims arising out of alleged errors in judgment, breaches of duty, and wrongful acts related to their organizational activities.
- **Identity Theft Insurance** - Identity Theft insurance covers a firm in the event that the personal identification data it holds for customers and employees (names, addresses, social security/bank account/credit card numbers) is compromised resulting in identity theft. The coverage responds to any