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Granite Insight

There has been a lot of consternation about plan employees filing claims against their employer. In fact, claims are starting to rise as employees sue about share class selection. In one case, employees sued and won. Plan Sponsors (Employers) are concerned about their Fiduciary responsibility and they should be.

Revenue Sharing has been incessant problem in the 401k industry. Basically, if any broker receives a mutual fund fee for placing a plan into a mutual fund, Granite Group Advisors believes they are conflicted. In fact, that is how the majority of the 401k industry works.

In recent court case, Tibble vs. Edison International, April 15th 2013, revenue sharing did not violate the Employers ability to offset plan costs. The one exception found in favor of the plaintiff, **the Employer was found to be imprudent by selecting more expensive share classes.**

The Issue:

ERISA protects Employers from liability when they do not exercise control. Pragmatically, the Employers mistakenly believe that the financial institutions they hire are responsible for any violation. What most Employers do not realize, the financial institutions represent their own interests and **the Employer is the one with all the liability**.

The Solution:

Employers must have a verifiable process. They cannot rely on their service provider. Employers should do the following:

- The provider should disclose and verify the process on quarterly basis. Ie, consistency of process to hire and fire, expense ratios, performance of funds, etc...
- The Employer should have an Investment Policy Statement (IPS). The 2008 LaRue case, the courts ruled in favor of the employee because the employer did not have a standard to maintain the plan.

Additional information:

If you would like specific information on operational and investment best practice, please contact Granite Group Advisors. Granite Group provides investment and operational consulting services for Retirement Plans, Pension, Endowments and Private Clients. Disclaimer: This brochure cannot be construed as tax, legal or investment advice. You should seek a qualified Erisa attorney for specific concerns on your plan.