

401k(k) Plan Danger

How to Limit Personal Risk

Let's Make it About You



***Employee Retirement Income
Security Act of 1974 (ERISA)***

「Let's Make it About You」

What Does this Mean?

According to ERISA § 409, “Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach...”



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*“The vast majority of HR representatives likely have no idea of the significant liability they are exposed to in their duties regarding their company’s 401(k)...**Turning a blind eye or missing a small detail may result in significant legal consequences and personal liability—potentially exposing their personal assets.** One such example is the case Tibble v. Edison International. Through a series of unlikely events, this case eventually made its way to the U.S. Supreme Court, where the VP of human resources was found liable of a fiduciary breach.”*

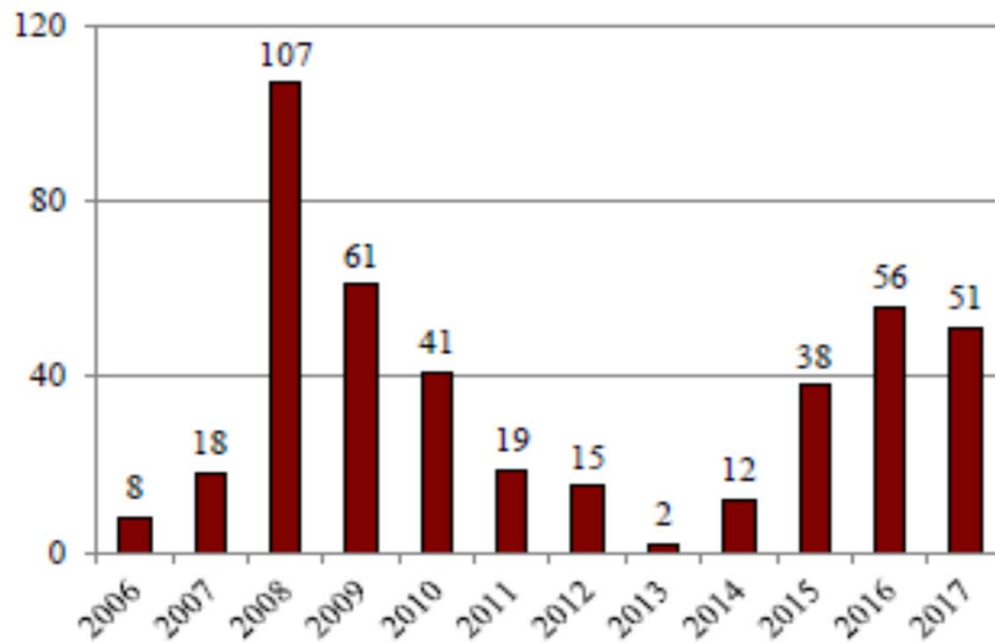
- Forbes Dec 12, 2017

“Building and growing a company requires intense dedication, and small firms don’t have the time to studiously manage and monitor a 401(k) plan. They simply trust the broker who sold them the plan and assume that, because they are nice, that the plan is working as sold.

- Entrepreneur June 2017



FIGURE 1. NUMBER OF COMPLAINTS RELATED TO 401(K) PLANS, 2006-2017



Source: Bloomberg Bureau of National Affairs, *ERISA Litigation Tracker* (2018).



Who are Fiduciaries?

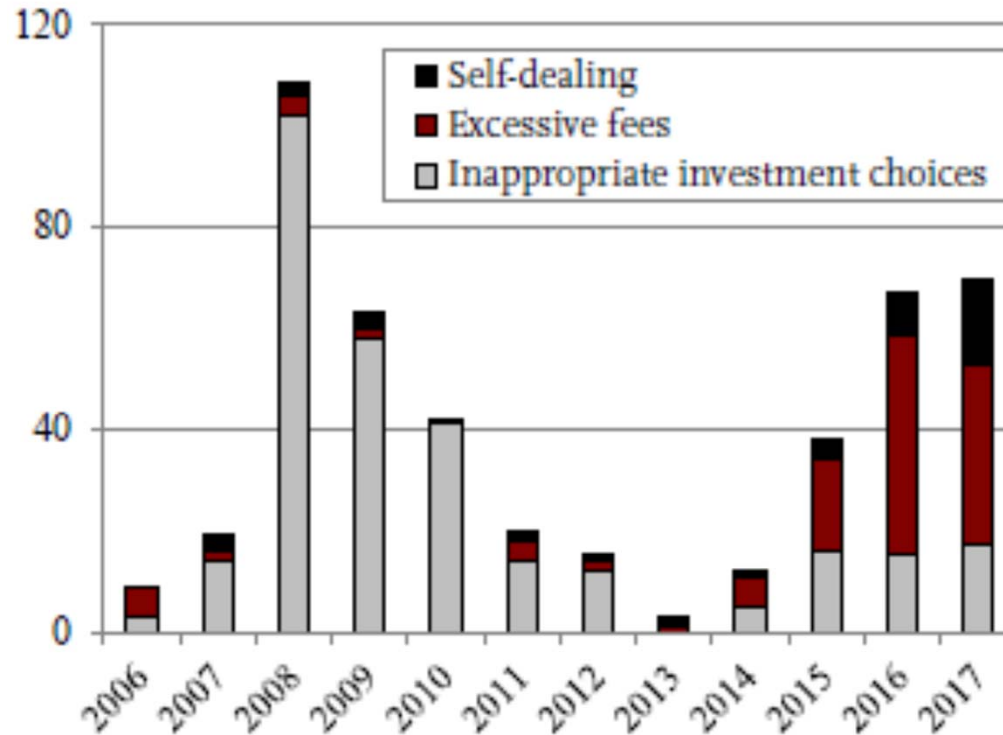


What should FIDUCIARIES worry about?



Causes for Lawsuits

FIGURE 3. NUMBER OF COMPLAINTS RELATED TO 401(K) PLANS BY TYPE OF COMPLAINT, 2006-2017



Note: The number of complaints is higher here than in Figure 1 because many cases have multiple bases for claims.
Source: Bloomberg Bureau of National Affairs, *ERISA Litigation Tracker* (2018).



Causes for Lawsuits

1. Inappropriate Investment Choices



Causes for Lawsuits

2. Excessive Fees

- *Investment Fees (expense ratio)*
- *Administrative Fees*



Causes for Lawsuits

3. Self Dealing



Let's Play Defense ... Prudence

1. *Get familiar with your fiduciary responsibilities*
2. *Document the processes used to carry out your duties*
3. *Give participants the ability to choose from a broad range of investment opportunities*
4. *Consider hiring a service provider to handle fiduciary functions (ex. 3(38) Investment manager, 3(21) Investment Advisor)*
5. *Perform periodic review or “mock” audit of your plan (fee comparison, investments, and documentation)*
6. *Consider Fiduciary Liability Policy*





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