RISK BULLETIN

ERISA Coverage:

Understanding Your Firm's Protection

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Over a 13-year period, engineering firm PBSJ Corp. experienced $42 million in losses due to employee theft. The legal tussle that ensued with Federal Insurance Company[1] exemplified the complexities surrounding insurance coverage, as PBSJ Corp. was met with the reality that their coverage fell short of recouping their losses. The company eventually went bankrupt.

Enter: Employee Retirement Income Security Act of 1974 (ERISA) coverage.

Administered by the U.S. Department of Labor (DOL), ERISA mandates fidelity bonding to protect private sector employee benefit plans from mismanagement and abuse of funds, which could include theft, forgery, embezzlement and larceny, among others. It's mandatory to insure the plan to facilitate recovery of covered losses.

ERISA coverage must be acquired from approved insurers listed by the Department of the Treasury. Conditions for obtaining bonds from underwriters at Lloyds of London may also apply. Neither the plan nor any interested party should have significant financial interest in the insurer or reinsurer.

To bond or insure your Plan Assets?

There are two insurance mechanisms to provide the coverage required by ERISA. A fidelity bond protects the plan assets from employee theft. Fidelity insurance, commonly known as Crime, provides broader coverage including theft of plan assets by third parties. Crime is regularly confused with Fiduciary Liability, which is protection from breach of fiduciary duty by the people that are administering the plans. As a company grows, it is common to outsource the management of plans to a third party.

Who is covered?

Anyone handling plan funds or property is required to be bonded unless exempted under ERISA. This includes plan administrators, trustees, employees and service providers with access to plan funds or decision-making authority that poses a risk of loss due to fraud or dishonesty.

Each person must be bonded for at least 10% of the funds handled in the preceding year, with minimum bond amounts set by ERISA, explained further below. Bonds should cover losses for each plan named on the bond. Plans can pay for the bond using plan assets, as ERISA's bonding requirements aim to protect the plan itself.

Understanding the intricacies of ERISA fidelity bonding is paramount for companies looking to ensure comprehensive coverage in the event of fraud or dishonesty. The following is guidance on understanding and obtaining the right ERISA coverage.

[1] Casetext "PBSJ Corp. v. Federal Insurance," Accessed March 1, 2024.

What To Know About ERISA Coverage

Securing adequate insurance coverage is crucial for protecting your firm's assets and minimizing risks. Collaborating closely with your insurance broker is essential to creating tailored and comprehensive protection. You should work with your broker to:

1. Learn the places where your ERISA coverage can be found.

Misconceptions surrounding ERISA bonding can lead to unnecessary or duplicate coverage. Many Crime policies already include ERISA coverage, especially if the insurer is U.S. Treasury listed.

ERISA coverage may also be integrated into your business owner's package (BOP) policy, particularly for smaller firms. Since the ERISA coverage is provided with a barrage of other coverages on a BOP, unless your broker is actively checking in with you on your plan asset size, we often find new clients are underinsured.

It is critical that ERISA coverage matches the evolving asset size of your firm. Work with your broker to determine any existing ERISA limits.

Avoid duplication of coverage so that you do not end up paying double the cost. Many auditors may mistakenly seek an ERISA bond, not realizing this is not the only place the coverage is found. For example, the below table shows the coverage on a Crime policy.

CRIME COVERAGES

INSURING AGREEMENT	SINGLE LOSS LIMIT OF INSURANCE	SINGLE LOSS RETENTION
A. Fidelity		
1. Employee Theft	$1,000,000	$10,000
2. ERISA Fidelity	$1,000,000	$0
3. Employee Theft of Client Property	$1,000,000	$10,000
B. Forgery or Alteration	$1,000,000	$10,000

2. Determine the right coverage amount.

Failure to bond ERISA to the required amount could result in negligence claims of the Fiduciary, underscoring the importance of aligning coverage with asset size. The DOL states that individuals handling plan funds must be bonded for at least 10% of the funds they managed in the previous year. The bond amount cannot fall below $1,000, nor can the DOL mandate bonding for more than $500,000 per plan official, or $1 million for plans holding employer securities.[1]

It is possible for your limit to be more than what is stated above if a person handles funds for more than one plan. Typically, if our clients purchase Crime, the ERISA Fidelity coverage will be at a much higher limit, i.e., $2 million, $5 million, $10 million or more.

3. Tailor your Crime coverage to fit your needs.

ERISA Fidelity is just one coverage provided by a Crime policy. More generally, it provides for employee theft of company assets, but it also can provide for employee theft of third party assets. Evaluate your Crime limit in relation to the amount of money you have in any one bank account.

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[1] U.S. Department of Labor "Protect Your Employee Benefit Plan With An ERISA Fidelity Bond," Accessed March 2, 2024.

Many companies are often misled by the protection afforded by the FDIC, not realizing that banks are held liable to a negligence standard. Coverage for third party assets is not automatically included; it must be underwritten based off employee exposure to third party assets and can often be contractually required.

There are often sublimits provided by a Crime policy, namely for social engineering and invoice manipulation. With the ability to trick employees to misdirect funds, more and more this will become a heightened risk. Partner with your broker to make sure you are adequately protected, either by working to increase the sublimit or by purchasing excess coverage outside of the Crime policy.

Crime can also be provided as part of an Executive Risk package policy providing the Fiduciary Liability mentioned above, but also liability for Directors & Officers and Employment Practices (harassment).

Protect Your Company

By proactively engaging with your insurance broker and leveraging their expertise, you can navigate the complexities of ERISA coverage with confidence, ensuring robust protection for your firm's assets against potential risks and liabilities. Greyling's consulting and insurance professionals can advise design professionals, design-builders, contractors, and owners/developers on these risks and risk mitigation strategies. Learn more at greyling.com.

Let's Talk

Greyling Insurance Brokerage & Risk Consulting, a division of EPIC, is a specialty insurance brokerage and risk consulting focused on construction and design professionals. We understand how our clients' businesses operate based on personal experience and we influence exceptional management of risk across their enterprises and construction projects.

Our approach to risk management and transfer delivers more stable and predictable outcomes for our clients – protecting their business and personal finances and allowing individuals and companies to focus on what truly matters – meaningful and innovative improvements to the built environment.