



Summer 2020

Fiduciary File™

Plan fiduciaries should be ready to address these “hot topics” this Summer:

- (1) The DOL has relaxed requirements for electronic disclosure of retirement plan documents and notices
 - a. Final regulations establish voluntary safe harbor for electronic delivery (rather than paper) of ERISA-required “covered documents” (e.g., SPD, SAR, QDIA notices)
 - b. Permits posting to employer’s website (with notice of availability) or delivery to participants’ email or phone
 - c. Must give participants right to choose paper delivery
- (2) Cybersecurity is more important than ever for fiduciaries in the work-from-home world (*Bartnett v. Abbott Laboratories* (N.D. Ill. Filed April 3, 2020))
 - a. Recent increase in participant distribution and loan activity presents opportunities for cyber criminals
 - b. Abbott participant filed fiduciary breach suit against Abbott, fiduciaries, and recordkeeper alleging failure to protect plan assets from theft
 - c. Fiduciaries should understand and monitor how participant account activity is initiated, review recordkeeper’s cybersecurity practices, and educate participants
- (3) Covid-related layoffs may cause partial plan terminations
 - a. Partial termination occurs if there is a significant (at least 20%) reduction in employees covered by plan as a result of employer-initiated job reductions or plan amendments
 - b. Participants affected by a partial termination must be made fully vested
 - c. Employers should evaluate potential partial terminations when considering job reductions
- (4) Prepare for SECURE Act changes on the horizon – new eligibility rules for part-time employees
 - a. Long-term part-time employees must be eligible to participate in salary deferral portion of plan
 - b. Employees who work at least 500 hours during three consecutive years
 - c. Employers must begin tracking hours in 2021
 - d. Plan amendments, SPD changes, and notice updates will be required; consider eligibility for matching and profit sharing contributions
- (5) Retirement plan fee litigation finds its second (or third) wind
 - a. At least 28 new cases filed this year, including against Cerner (two cases) and BOK
 - b. Excessive recordkeeping fees, investment fund fees, and lack of fiduciary oversight are central themes
 - c. 8th Circuit revived *Washington Univ.* case, articulating lower pleading standard to survive motion to dismiss
 - d. Maintaining a sound fiduciary process is the key to avoiding and surviving litigation



Gregory L. Ash
Spencer Fane LLP
913.327.5115
gash@spencerfane.com