

# The Excellent Fiduciary: Traits of Effective Committee Members

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*The architecture of employee benefit plan committees, also known as plan fiduciary or plan oversight committees, is as diverse as the organizations that sponsor them. There is, however, essential consistency in the skills and experiences of the individuals employers appoint to serve as committee members.*

*Members of employee benefit plan committees have a critical role in ensuring that retirement, health and welfare plans, and other benefits programs qualified under the Employee Retirement Income Security Act (“ERISA”) are well-designed, legal, and in line with the sponsor’s objectives and employees’ requirements. In recent years, widespread class action lawsuits for fiduciary responsibility violations have highlighted the exceptional risks assumed by persons on plan committees and the abilities required to carry out their functions. This article*

*will discuss the scope of those abilities set forth by federal regulatory agencies and the courts and define the key traits of effective committee members.*

## THE RATIONALE FOR A COMMITTEE

The rules that define the conduct standards for employers who sponsor employee benefit plans do not mandate forming a committee to oversee the plans. However, the growing complexity of managing defined contribution, defined benefit, and health and welfare plans has led to widespread adoption by prudent enterprises of the oversight by-committee approach. Employers have realized that a team of internal managers and outside experts can satisfy all the disciplines (i.e., governance, administration, investments, and controls) on which the fiduciary duties defined by federal and state fiduciary laws

rest. A high level of proficiency in such skills is vital. A correctly set up and operating fiduciary committee makes sure that each discipline gets the proper attention, closes information gaps with vendors, reduces the risk of legal action and regulatory penalties, responds to plan participants’ needs, and ensures that the costs of the services provided by vendors do not outweigh the benefits of their services.

## BASIC SKILLS

Members of committees that effectively oversee employee benefit plans must possess a range of skills that contribute to the committee’s success and achieving its goals. These include strong listening skills, effective collaboration and diverse communication styles, and the ability to disagree with civility.

By possessing strong listening skills, committee members

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can actively listen to others' viewpoints and ideas. That allows for more inclusive and comprehensive discussions, leading to better decision-making.

Additionally, having diverse communication styles within the committee allows for more creativity and innovation in problem-solving. Furthermore, effective committee members are skilled at collaborating and communicating effectively.

Members who can disagree with one another respectfully contribute to a healthy and robust discussion. They can work well with others, share information and ideas, and ensure they are on the same page with the group. Members with diverse opinions that aren't afraid to speak their minds are essential to high-functioning ERISA plan committees. That can result in heated discussions, so staying calm, composed, and respectful is important. It should never get personal. A spirit of collegiality is an essential quality to ensure that committee members maintain a good working relationship and keep the committee's focus on the greater good. Committees must strive for consensus on all issues, so members must be willing to support the majority, even if they disagree.

## LEADERSHIP ESSENTIALS

Before diving deeper into the traits of effective ERISA plan committee members, recognition of the impact a committee's leader has on their success is essential. The skill and wisdom of the chairperson is vital. The committee leader should outline the team's goals, identify duties, set meeting procedures, promote participation, share the spotlight, and recognize accomplishments. (A committee charter is an excellent way to memorialize protocols and expectations.) The committee leader should also support team reflection on committee effectiveness and foster a team-oriented culture.

## THE ACCOUNTABILITY ENVIRONMENT

ERISA requires that every employee benefit plan "be established and maintained pursuant to a written instrument." It's the so-called *plan document*. It defines all the features and provisions for operating a plan; committee members should know it well.

Being part of an ERISA plan committee imputes fiduciary status to members, which demands high responsibility, integrity, and dedication to ensuring compliance with federal and state regulations. Mem-

bers must stay updated on the constantly evolving laws and regulations surrounding the employee benefits community.

ERISA stipulates six primary duties for fiduciaries, and they include:

1. Duty of Care
2. Duty of Loyalty
3. Duty of Obedience
4. Duty of Confidentiality
5. Duty of Prudence
6. Duty to Disclose

Committee members' obligations are crucial because they set a high bar of care for the accounts of an ERISA plan's participants. Committee members are subject to legal and ethical requirements, shielding the participants from abuses of authority, conflicts of interest, security intrusions, and excessive fees for products and services. The Internal Revenue Service and the U.S. Department of Labor ("DOL"), through its enforcement arm, the Employee Benefits Security Administration ("EBSA"), are the principal regulators.

The federal court system is also a "regulator" that dramatically impacts the determination of the appropriateness of ERISA plan committee decisions that affect participants, such as compensation paid to

service providers, investments, and data security. As fiduciaries under ERISA, oversight committee members who violate ERISA's ethical standards could be personally responsible for making good on any losses to the plan. Fiduciaries who violate their obligations may face financial penalties from the courts, including a prohibition from serving as a fiduciary.

Over the past few years, class action lawsuits for breaches of fiduciary duty emerged as a real-world threat to committee members and their employers alike. The most recent *Workplace Class Action Litigation Report* published in 2022 reported cash settlements in breach of fiduciary class actions were 229% higher in 2021 than in 2020, growing from \$1.58 billion in 2020 to \$3.62 billion in 2021. Those numbers illustrate the seriousness of the potential liability committees face and should cause ERISA plan committee members to ensure their skills match their role.

A review of the allegations against plan fiduciaries for breaches of their duty in the original case filings of dozens of lawsuits reveals they center on five themes.

1. Excessive compensation paid to service providers.

2. Cybersecurity intrusions.
3. Administration errors linked to recordkeeping and payroll.
4. Investment policy violations.
5. Governance failures.

### ESSENTIAL SKILLS

With so much at stake, committee members must possess well-honed skills, not all of which are intuitive and, therefore, must be acquired. Key traits that contribute to their effectiveness include:

1. **Expertise:** Committee members should be well-versed in employee benefits, such as retirement plans, health insurance, wellness initiatives, and other perks sponsored by the enterprise. While expertise is crucial, the best committee members may not always be those with the most extensive and outstanding résumés. However, they need the knowledge and skills to manage the topics the committee covers.
2. **Communication Skills:** Effective committee members can explain complicated employee benefits information to

other committee members and employees simply and intelligibly. They ought to be able to respond to queries and concerns appropriately.

3. **Analytical Thinking:** Members must analyze data, compare various benefit options, and provide well-informed suggestions.
4. **Legal and Regulatory Awareness:** ERISA plan sponsors must abide by laws and regulations. To ensure that a plan is compliant and steers clear of legal concerns, committee members should be aware of these regulations.
5. **Empathy:** Great committee service is rooted in a passion for the mission. While various reasons may drive individuals to agree to assume the challenging role of an ERISA plan overseer, a strong desire to fulfill the committee's mission must be one of them. It is vital to understand and empathize with employees and their beneficiaries' diverse needs and concerns. Committee members should advocate for programs that

genuinely improve the workforce's well-being.

6. **Strategic Planning:** Committee members should consider how benefit plans align with the organization's overall goals and culture. They should consider how benefits impact recruitment, retention, and employee satisfaction.
7. **Data-Driven Decision Making:** Using data and metrics to assess the effectiveness of existing benefit plans and propose changes is essential. Data-driven decisions are more likely to lead to successful outcomes.
8. **Conflict Resolution:** Differences of opinion are natural, but influential committee members can navigate conflicts, listen to various viewpoints, and collaborate to find solutions that benefit the majority.
9. **Ethical Integrity:** Character matters. Great committee members need to have integrity and be ethical and honest. They must appreciate their tremendous responsibility. Since benefits programs can significantly impact

employees' lives, committee members must make decisions that are fair, transparent, and aligned with the organization's values. Members need to be committed to the task at hand and be dependable and accountable to their colleagues and the enterprise that sponsors the ERISA plans they oversee. That means being prepared, attentive, and present at all committee meetings. Being dependable also means having the time required to commit to the role fully.

10. **Adaptability:** The landscape of employee benefits is constantly evolving. Committee members should stay informed about industry trends, emerging benefit options, and changing employee needs. Great committee members are inquisitive and open to new ideas and opinions. They strive to understand the issues, trends, and other factors that could impact the plan participants in the future. An open mind is the key to being forward-thinking.

11. **Time Commitment:** Be-

ing a committee member requires time and dedication. Effective members are committed to attending meetings, reviewing materials, and actively participating in discussions.

12. **Feedback and Improvement:** Committee members should be open to employee feedback and willing to improve benefit offerings based on feedback and changing circumstances continuously.
13. **Attention to Detail:** Benefit plans involve intricate details, including plan documents, enrollment procedures, and compliance requirements. Paying attention to these details is crucial to avoiding errors and legal issues.

By embodying these traits, employee benefit plan committee members can contribute significantly to creating and maintaining benefit plans that enhance employee well-being, satisfaction, and overall organizational success.

## STAYING AHEAD OF THE CURVE

The issues faced by ERISA plan committees are not static. Employees come and go, tax

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laws change, vendors' jargon evolves, regulatory focus shifts, reporting requirements grow more complex, and securities markets remain volatile. In order to keep pace, ERISA expects fiduciaries to continuously improve their skills, methods, and results.

According to the DOL, an

awareness of the fiduciary skill set is the first step toward aligning with best practices. Continuous improvement in the fiduciary realm does not have to mean large-scale change. By making minor tweaks throughout the fiduciary experience, individuals and committees that manage plans, re-

gardless of size, can reduce defects, remove activities that do not add value to participants, and improve the balance between fees participants pay for services and the quality of those services. Excellence in the fiduciary role is not a destination but a continuous improvement process.