**Fiduciary Duty #35**

On May 18, 2015, a unanimous U.S. Supreme Court held in *Tibble v. Edison International* that fiduciaries who select investment options for 401(k) plans have a continuing duty under the Employee Retirement Income Security Act of 1974 (ERISA) to monitor their selections and remove imprudent investment options.

ERISA imposes on a fiduciary of an employee benefit plan — including any person responsible for selecting or removing investment options offered under a 401(k) plan — a duty of prudence that requires the fiduciary to “discharge his duties with respect to a plan ... with the care, skill, prudence, and diligence” that a prudent person would use under similar circumstances.  A plan fiduciary that breaches this duty of prudence may be held liable to the plan for any resulting losses.

Although the Supreme Court recognized that ERISA imposes on fiduciaries who select investment options for 401(k) plans a continuing duty to monitor the selections, and remove imprudent investment options, it declined to provide any guidance as to the scope of this duty.

These notes, representing the perspective from the legal community on the results of the *Tibble v. Edison* *International* case, underscore the need for plan sponsors to monitor the investments in their plan on a regular and continuing basis in order fulfill the fiduciary duties that confront them.

In the absence of any guidance on this matter from the Supreme Court of the United States, best practices suggest that such monitoring take place no less frequently than annually.

If you would like to discuss this matter further, please don’t hesitate in reaching out to us.

Mike & Matt Callan