



ERISA

Advisory Group

FIDUCIARY GUIDANCE

and ESOP Trustee Duties

Key Fiduciary Principles

- Act solely in the interests of ESOP participants and beneficiaries, defraying only reasonable expenses.
- Exercise care, skill, prudence, and diligence consistent with that of a prudent expert under similar circumstances ("Prudent Person" rule).
- Act in strict accordance with plan documents and all relevant ERISA and regulatory requirements.
- Avoid conflicts of interest, self-dealing, and prohibited transactions. Maintain strict loyalty to participants.

Types of ESOP Trustees

- Independent trustee: Free from company conflicts; often retained for discretionary decisions.
- Directed trustee: Follows instructions (e.g., from board), but must ensure all actions comply with ERISA and are in the interests of plan participants.



Trustee *Duties*

1. Administrative Oversight

- Legal shareholder and custodian of ESOP shares and trust assets.
- Ensure trust assets, including cash and securities, are correctly titled and managed.

2. Ongoing ESOP Maintenance

- Retain and oversee an independent appraiser for annual valuation of ESOP stock.
- Establish the annual ESOP stock price, affecting payouts to participants and buyback calculations.
- Document decisions thoroughly (meeting minutes, memos, appraiser reports) to demonstrate prudent process.

3. Governance and Voting

- Vote ESOP shares, typically to select or confirm the board of directors.
- Collect and summarize participant directions if required, and cast votes as instructed or in best interests of the plan.

4. Monitoring and Compliance

- Ensure the ESOP operates according to trust and plan documents, and remains in compliance with ERISA.
- Monitor board actions and management performance; may attend meetings or review compensation to protect ESOP value.

Trustee *Duties*

5. Financial and Transactional Duties

- Receive contributions, dividends, and distributions. Make loan payments if needed for ESOP stock acquisition.
- Authorize and oversee distributions to participant accounts, ensuring correct tax treatment and documentation.

6. Due Diligence in Transactions

- In company sales or major ESOP transactions, review offers and act only if the value meets participant best interests based on objective financial analysis.

7. Record Keeping and Reporting

- Maintain custody of ESOP stock certificates and prepare required annual reports for the plan sponsor.
- Track repurchase obligations, trust statements, and participant communications.

Best Practices

- Vet all advisors and appraisers carefully for independence and ESOP expertise.
- Keep comprehensive documentation to support all significant decisions and show compliance with fiduciary standards.
- Regularly review all plan documents to ensure they reflect current law and organizational needs.

This single reference provides a practical summary of ESOP fiduciary rules and trustee responsibilities with clear guidance for maintaining compliant, effective oversight of employee ownership plans.

