

TIP SHEET

**Risk Management Ideas From
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Fiduciary Liability vs. Employee Benefits Liability

There is often confusion over the similarities between the policy for Pension and Welfare Fund Fiduciary Responsibility Insurance and the Employee Benefits Liability Endorsement for the Commercial General Liability Coverage Part. Although some coverage duplication exists in the area of administrative errors and omissions, the thrust of the two forms is different. The EBL endorsement was designed primarily to provide coverage for administrative errors and omissions for a large variety of benefit plans. The Fiduciary policy form was designed to cover ERISA (Employee Retirement Income Security Act) exposures of fiduciaries for specifically designated plans to the extent that they are caused by a “wrongful act”. A comparison between these two distinct coverages is as follows:

Fiduciary Responsibility Insurance Policy For ERISA		Employee Benefits Liability Endorsement	
1	Pays on behalf of the insured damages (as defined) on account of any claim made against the Insured for any Wrongful Act - breach of fiduciary duty which includes any negligent act, error or omission in the “administration” of employee benefit plans.	1	Responds to claims for damages (not defined) due to any negligent act, error or omission by you or any person for whose acts you are legally responsible in the “management” of public and private employee benefits.
2	Formed to adhere to ERISA. Responds to claims for damages arising out of improper investments, plan and employee advice, insufficient funding and failure of an insurer to perform subject to policy conditions and exclusions.	2	Excludes any claims based upon “failure of any investment to perform as represented by an Insured,” “advice given by an Insured to participate in any Employee Benefit Plan” and “insufficient funding”. Also excludes failure of an insurer to perform.
3	“Administration” is defined to include: a) Giving counsel to employees b) Interpreting benefits c) Handling records d) Effecting enrollment, termination, or cancellation of employee’s benefits	3	“Management” is defined to include: a) Counseling employees b) Interpreting benefits c) Handling records d) Enrollment, termination or cancellation of employee’s benefits
4	Limits of liability apply in the aggregate.	4	Limits of liability apply per employee and in the aggregate.
5	No specific limitation on parties that can bring claim under the policy.	5	Covers claims for damages made by current and former employees and their legal representatives.
6	No retroactive date applies.	6	Specifies retroactive date of coverage.
7	Usually no deductible.	7	Automatic \$1,000 deductible applies.

Source: The Travelers Group #122804