WRONG WAYS
Things You Could Be Doing Wrong as an ERISA Fiduciary

Not knowing who the plan fiduciaries are.
Often a big problem for ERISA fiduciaries is that sometimes they do not even know if they are one – or who else shares that status for the plan. Everyone associated with the plan should be cognizant of whether their responsibilities create fiduciary obligations. If you are a plan fiduciary, your liability is personal and it can extend to the actions of other plan fiduciaries.

Not following the plan's definition of compensation for purposes of determining contributions or benefits and nondiscrimination testing.
A plan document may have multiple definitions of compensation, including definitions for purposes of calculating salary deferrals, matching contributions, and discretionary contributions. The use of an incorrect definition of compensation can lead to operational errors in nondiscrimination requirements, the employer's deduction for plan contributions and the determination of highly compensated or key employees. Plan administrators need to understand the differences in the types of compensation used for different purposes.

Not making sure that fees are reasonable.
One of the most widely cited fiduciary failures is failing to determine whether the fees being paid by the plan for administration and for investments are reasonable. And, the second most frequent fiduciary mistake is failing to document the decision making process. There are plans that have not conducted competitive bids for recordkeeping services in many years. Plan fiduciaries will want to make sure that they consider soliciting a competitive bid and that the consideration of the bid process is captured in the official fiduciary review process for the calendar year.

Failure to read the plan document.
The plan document serves as the foundation for plan operations – it is the operating manual for the program. If you are relying on a document that has been prepared by a third-party service provider, it is not unusual for certain "gaps" to emerge between what the document allows and how the plan is actually administered. It is a good idea to conduct a document/process "audit" every couple of years – do not assume that "the way we've always done things" is supported by the legal document governing the plan.

Not depositing contributions on a timely basis.
The legal requirements for depositing contributions to the plan may be the most widely misunderstood elements of plan administration. The law requires that participant contributions be deposited in the plan as soon as it is reasonably possible to segregate them from the company's assets, but no later than the 15th business day of the month following the payday. If employers can reasonably make the deposits sooner, they need to do so.

Not monitoring investments on a regular basis.
Generally there is a process for review and evaluation of investments when they are selected. However, it is not unusual for plans to not regularly monitor the performance and fees for the investment providers and investments that have been selected. Related to this is the failure to have an investment policy statement in place and to document the process when changes are made. These are not ERISA requirements, but putting them in place provides a "road map" for decisions that support prudence under scrutiny.

Not seeing the help of experts.
ERISA imposes a duty of prudence on plan fiduciaries. Those fiduciaries must act "with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use…" The "familiar with such matters" is the sticking point. If you lack the skill, prudence and diligence of an expert, you are expected to get help.