

Late Employee Elective Deferrals -- Department of Labor Continues to Investigate Fiduciaries

Posted by Jewell Lim Esposito on January 04, 2011

Despite advice to the contrary, a company I once represented erroneously thought that being late on employee elective deferrals into a 401(k) was a mere minor problem, involving just tens of thousands of dollars. The Department of Labor investigated, some two years later. Generally, there is NO attorney-client privilege between an ERISA plan fiduciary and the attorney. Thus, all the existing file correspondence on what was wrong with the 401(k) plan administration, how to correct, and whether the fiduciary decided to heed recommendations to make the 401(k) plan participants whole are subject to production to the Department of Labor and, likely, the Internal Revenue Service, in the event of cross-referral to that agency.

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