

## Things Clients Are Asking Us About Retirement Plans

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Ever wonder what other clients are asking us about? Here's a sampling.

- **Withdrawal Liability and "Plant Closing" Liability:** The economic downturn is prompting some clients to consider closing plants and to examine their collective bargaining obligation to contribute to multiemployer (union) pension plans. Either step can have significant consequences. Bargaining out of a multiemployer pension plan can trigger "withdrawal liability" that can be very significant . . . we've seen cases where the liability is many times the sum of all of the hourly contributions ever made to the plan. Similarly, a plant closing where individuals employed at the plant participated in an employer-sponsored defined benefit plan may trigger an obligation to fund a five-year escrow of any shortfall in the plan's funding. There are ways to deal with both withdrawal liability and plant closing liability, but they require advance planning.
- **The Definition of "Compensation":** For several reasons, the definition of compensation used in retirement plans is getting much more attention recently. We have seen a lot of disparity between how a plan defines compensation and how that definition is applied in practice. In some cases, the differences relate to technical kinds of compensation, such as moving expenses and excess life insurance coverage. In other cases, the variations are the result of payroll practices that do not follow the plan language. It is important to find and address these discrepancies because they affect contributions and plan testing.
- **Auto Enrollment . . . in Practice:** As more and more clients move to auto enrollment, we are helping to establish procedures to implement it successfully and to deliver the appropriate notices to participants. We are also seeing instances in which participants were not enrolled accurately. There is a mechanism through the IRS's voluntary compliance program to deal with mistakes in that regard, but it requires prompt attention.
- **Fiduciary Process:** We could write a book about this one. We are seeing more concern with the potential liabilities of the investment committee and members of the Board of Directors, with the best ways to delegate fiduciary authority and the appropriate contract language with fiduciary advisers in that regard, and with compliance with Section 404(c) of ERISA in order to minimize the plan sponsor's fiduciary exposure for participant investment decision-making. We are also seeing more attention paid to the selection and monitoring of investment alternatives for participants, particularly because of the issues arising lately with target date funds. Some target date funds have turned out to

be not exactly as advertised, with problems coming to light as a result of the market downturn a year ago.

- **Participant Notices Generally:** We have a raft of new participant notices that are necessary now that did not exist two or three years ago, including both defined contribution and defined benefit statements for participants, the "QDIA" (or qualified default investment alternative) notice, automatic enrollment and safe harbor notices. In many cases, the notices must be provided annually – usually prior to the beginning of the plan year - and should be part of your regular schedule of administrative activities for the plan.
- **Updates of Distribution Forms:** The distribution forms for both defined contribution and defined benefit plans should be reviewed to make sure they contain appropriate updated language, such as the newly required discussion of the impact of deferring the commencement of payment. Also, the IRS just issued a new form of tax notice which should now be used for distributions.