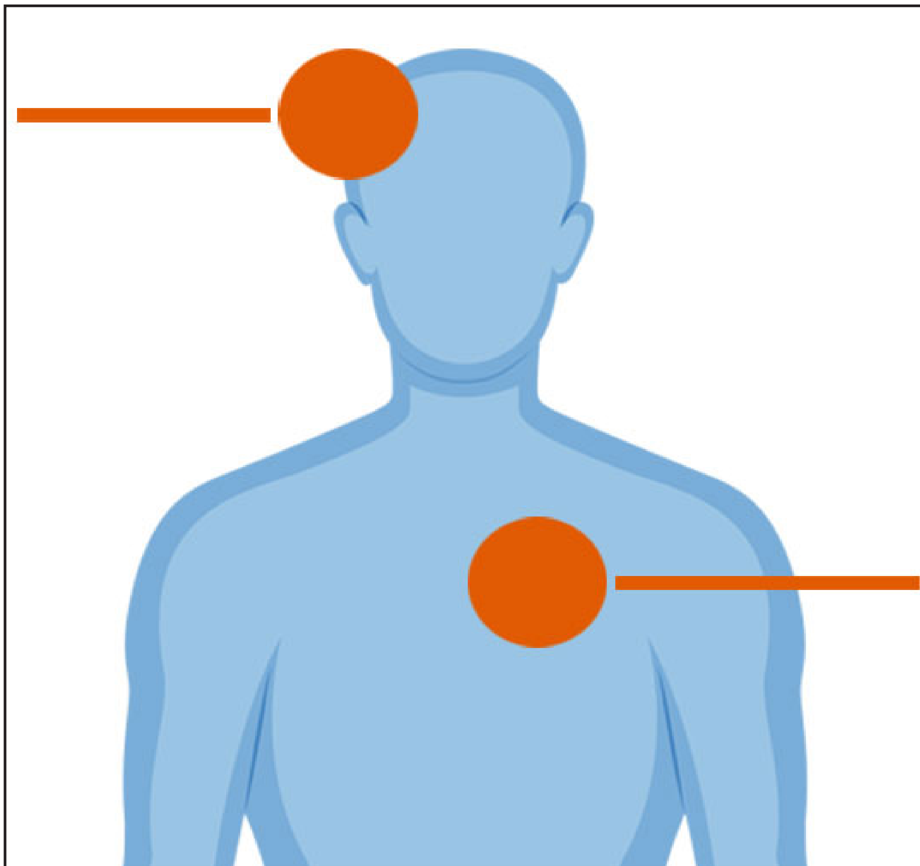
Some Symptoms of Retirement Plan Issues

By Ary Rosenbaum, Esq.

I'm a hypochondriac and I always think I'm coming down with something. Before that COVID vaccine, there were about 3-4 times where I thought I got COVID. Luckily, 3 years and 5 shots later, I've never had it. When it comes to a retirement plan, there are symptoms to suggest that something is wrong. This article is all about symptoms that might suggest you should be looking at your plan.

The Retirement Plan Tune-Up

As many of you know, I offer a Retirement Plan Tune-Up, a legal review for $750 that reviews the documentation, administration, costs, and the fiduciary process of a retirement plan. Fees for this review can come from plan assets. Over the 13 years I've offered it as part of my practice, it's not been a popular service because most plan sponsors either are unaware they might have issues or like my mother with doctors, don't want to know there is a problem. Regardless of whether you would use my review or hire someone else, it is incumbent on plan sponsors as plan fiduciaries to review their plan on an annual basis to see whether the plan still fits their needs and whether it's running correctly. Running correctly is about paying reasonable fees, taking care of the fiduciary process, and making sure the plan is operating correctly according to its terms and the law.



Glaring Problems

So while all plans should be reviewed, there are some plans with more glaring problems than others. These plans may have symptoms that the plan isn't running correctly and should immediately undergo a plan review. Here is a list:

1. A plan where the third-party administrator (TPA) is not transparent on fees. Even with fee disclosure, there are TPAs that are less than transparent when it comes to their fees. You really shouldn't need an ERISA attorney or forensic accountant to figure out what your TPA is charging.

2. A company that has a profit-sharing and money purchase plan that covers the same group of employees. Prior to 2002, the maximum deductibility for an employer contribution for a profit-sharing plan was 15% of Compensation and so that is why employers would also offer a 10% contribution money purchase Plan. Thanks to a law change in 2022, the limit on profit-sharing contribution deductibility was lifted to 25% of compensation, making the need for a money purchase plan obsolete.

3. A plan that has consistently failed its discrimination testing, whether it's the tests for salary deferrals, top-heavy, match, or 410(b) participation. If a plan is consistently failing, that is a problem that can't go unless corrective action is made, which could be achieved through a variety of solutions including a safe harbor 401(k) plan design.

4. A defined benefit plan which is underfunded. Whether it's poor investment returns or interest rate issues, there needs to be a plan in place to fix any underfunding issues. I've known so many defined benefit plans with funding issues and it would be an undue burden on your finances. Freezing further plan accruals is always a choice.

5. A defined benefit plan for a company that has increased its workforce.

What worked well for an employer that had 3 employees, may not work as well when they have a dozen employees.

6. Any plan with no financial advisor. In this day and age with a volatile stock market and being responsible for the retirement assets of your employees, there is absolutely no reason you should not hire a financial advisor.

7. A money purchase plan that is covering non-collectively bargained employees. As stated before, the change in profit-sharing contribution deductibility issues makes a money purchase plan obsolete for non-collectively bargained employees. Money purchase plans have required, stated contributions, so that is why it's a popular plan for union employees, especially for unions where a defined benefit pension plan has been eliminated.

8. Any 401(k) plan that has not reviewed its contract with its insurance company provider in the last 5 years. Thanks to fee disclosure regulations, there has been competitive pricing from all plan providers including TPAs. You might be paying more if the plan is operating under an expired contract with an insurance company.

9. Any plan without an Investment Policy Statement (IPS). While not legally required, a plan should have an IPS and follow it. An IPS states when and why plan investments are elected and replaced. It's an essential part of proving there is a prudent fiduciary process in place.

10. Any plan that has not reviewed their choice of investments in the last year. It's not only important to have an IPS, it's important that the investments be reviewed, to make sure it fits the requirements of the IPS. A plan that doesn't follow its IPS is in worse shape than one that doesn't have one.

11. Any plan that has not seen their financial advisor in the last year. Why would you pay a financial advisor to work on your plan and not do their job? Whether it's your choice or not, it's your fiduciary duty to meet them and have them do their job.

12. Any plan without an ERISA bond and/or fiduciary liability insurance. An ERISA bond is required for every plan subject to ERISA. An ERISA bond protects plan assets from theft by plan fiduciaries. A fiduciary liability policy isn't required, but it's a great way of protecting yourself from any litigation issues from plan participants.

13. A 401(k) plan with low participation or low average account balance per participant. This could be the fault of your demographics or a lack of support from your plan providers to get your employees involved. I've seen plays where participation has increased through automatic enrollment or a new financial advisor that has done a better job of engaging plan participants.

14. Any plan that has not been updated in the last 2-3 years. A retirement plan should be reviewed every once in a while. Whether it's through my Retirement Plan Tune-Up or a review conducted by a plan provider, it needs to be done.

These are just some examples of symptoms that indicate you may have a retirement plan in distress. Regardless of whether you have the symptoms or not, you should have your plan reviewed.

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