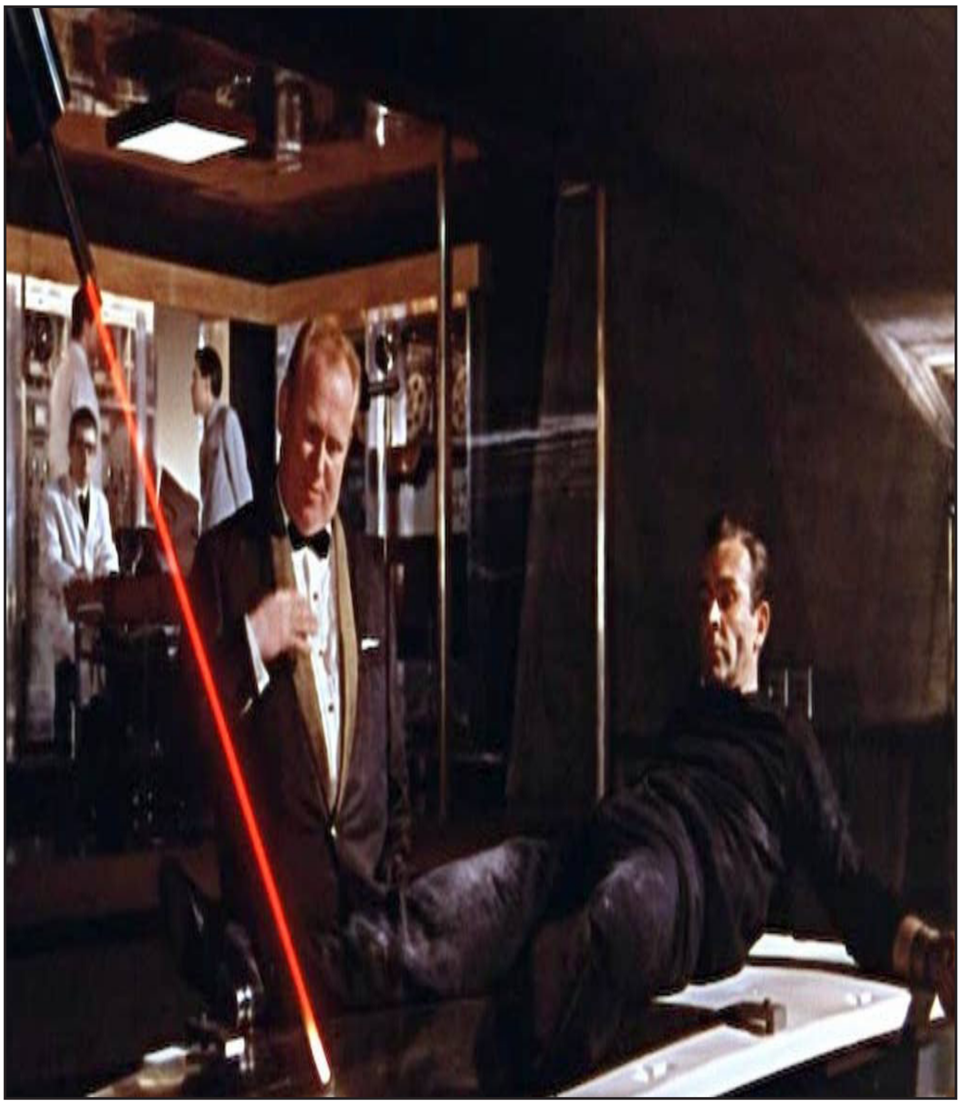
The Attitudes That Get 401(k) Plan Sponsors In Trouble

By Ary Rosenbaum, Esq.

I've been an ERISA attorney for 22 years, so I've dealt with 401(k) plan sponsors in different industries and different sizes. While there are many types of sponsors, there are underlying human nature characteristics such as attitudes that really can dictate whether a plan sponsor will land in trouble or not. When it comes to 401(k) plan sponsors, there are certain attitudes that I've seen that will land a plan sponsor in trouble, so this article is all about the attitudes you should avoid.



Attitude and why it matters

In college, I never took psychology as a Political Science major hell-bent on going to law school. The Google machine tells me that attitude is a psychological construct, a mental and emotional entity that inheres in or characterizes a person. People are shaped by their experiences and their attitudes and I believe that certain attitudes will cause them to harm as a 401(k) plan sponsor. Why would certain attitudes cause harm as a 401(k) plan sponsor? Certain attitudes plan sponsors exhibit that lands them in trouble because it's clear that they don't understand their role as a plan sponsor. Not only are they a plan sponsor, but they're also a plan fiduciary. Being a plan fiduciary is a difficult position, being responsible for the retirement assets of plan participants. Being a plan fiduciary requires the highest duty of care because plan sponsors need to be more careful over money that belongs to their participants. That is why I believe that certain attitudes that many 401(k) many sponsors harbor can be costly to them. A plan sponsor can't afford to be wedded to one basic attitude, they need to keep an open mind when it comes to running their 401(k) plan and change their views and attitudes when day to day plan occurences need attending to.

The procrastinator, always being "too busy"

Running a business isn't easy. I notice this every morning as I work out of the house and have to make sure that my kids are ready for school. I have so many tasks to handle including items that don't make me a nickel. I know all employers are busy, it's the nature of running a business. However, I think the worst attitude that a 401(k) plan sponsor can have is claiming that they're always "busy." These are the type of plan sponsor who try to delay necessary meetings with their financial advisors or is too busy for the advisors to hold plan enrollment/education meetings for participants. At a certain point, a 401(k) plan sponsor has to make sure that they can make time in managing their 401(k) plan. I always joke that many plan sponsors are like a James Bond villain who puts Bond in a contraption that will kill him, leave, and assumes everything goes to plan (as spoofed in the Austin Powers movie). Busy

401(k) plan sponsors can't assume everything goes to plan, because mistakes are made by plan providers and necessary plan fiduciary functions must be completed. Plan sponsors have hired providers to help them in the management of the 401(k) plan. What plan sponsors need to do is let their plan providers do the job and not obstruct their work. That means plan sponsors need to hold their necessary fiduciary and enrollment/education meetings. That also means that the 401(k) plan sponsor should also have time to review their plan providers. Reviewing plan providers to make sure they're doing their job is a necessary fiduciary function. A plan sponsor needs to make sure that the providers are doing their job they have been hired to do and that they're competent at it. In addition, the plan sponsor also needs to make sure the providers charge reasonable fees for the services provided. That could involve seeking pricing from competing providers in the marketplace or using some service or book to benchmark fees. While it doesn't mean those plan sponsors should hire the cheapest providers, they do have a duty to make sure that the providers charge reasonable fees for the level of the service provider. No matter how busy the plan sponsor might be, there is no excuse for not prudently fulfilling their fiduciary duty. I assure you that a plaintiff-side ERISA litigator or an agent from the Internal Revenue Service (IRS) or Department of Labor (DOL) doesn't care how busy a 401(k) plan sponsor is.

Being gullible, taking plan providers at their word

When dealing with people in everyday life, there is nothing wrong with taking people at their word. You assume people aren't lying and there are times infrequently, where you make a mistake in doing that. 401(k) plan sponsors can't afford to take the word of their providers. Over the last 22 years, I have been on so many sales meetings with third-party administrators (TPAs) and/or financial advisors where the plan sponsor we're meeting will say that everything in their plan is fine. These plan sponsors will claim that their plan is running fine because their plan providers say so. That's silly because what TPA or financial advisor working on a plan is going to say that there is anything wrong with the plan for problems that the providers caused. Having a plan provider say everything is OK is self-serving and a 401(k) plan sponsor just can't assume (like the James Bond villain) that everything goes to plan. I have spent the last 22 years of helping plan sponsors correct errors, many caused by the plan providers they hired. A consistent remark by these troubled plan sponsors is the disappointment that they thought their plan providers took care of them. From experience, most TPAs and financial advisors know what they're doing and there are quite a few providers that have no idea what they're doing. Plan sponsors can't be gullible and just take the word of their plan providers, no matter how good they are because even the best provider can make a mistake now and then. If a plan provider is at fault, the buck still stops with the 401(k) plan sponsor, no matter how much of a fiduciary rule that a plan provider assumes. At the end of the day, the plan provider may have some liability for the mistake they make, but it's the plan sponsor's burden to bear ultimately in fixing it.

Arrogance is the worst attitude of all

As an employee for 12 years and as a student of business failures, the one attitude that can be deadly for business is arrogance. Arrogance is the attitude of having an exaggerated sense of one's importance or abilities. When you've worked for a mid-sized law firm for a few years as I did, you'd see the arrogance daily and recognize that trait the way I did. In the 22 years that I've served as an ERISA attorney, the most difficult clients are the clients that think they know more than I do. Where I come from, I always believe that the whole purpose of 401(k) sponsors hiring retirement plan providers is because they don't have the expertise to handle a plan fully on their own. If a plan sponsor doesn't have the requisite knowledge to run a plan on a day to day basis, that's fine. The problem arises is when the plan sponsor is arrogant enough to suggest that they know better than their plan providers, even though they don't have any experience to warrant that arrogance. How many times have I seen a 401(k) plan sponsors received good advice from their plan providers and ignored it to their detriment? A 401(k) plan sponsor shouldn't follow a plan provider blindly, but if they don't, it has to be based on prudence. 401(k) plan sponsors delegate the day to day administration of their plan to their providers, they shouldn't be arrogant to get in the way.

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