

**THE  
ROSENBAUM  
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**THE LAW FIRM REVIEW**  
A Publication for Plan Sponsors and Retirement Plan  
Professionals

## The Plan Sponsor Awakens.

It's true, all of it.



Like most of my generation, I have been a Star Wars fan since I first saw A New Hope when I was 5 in 1977. I even liked the prequel trilogy (except for Jar Jar Binks). When they announced that there would be an Episode VII, I was a little wary about a continuation of a story that had the perfect ending in Return of the Jedi. After two screenings of The Force Awakens, I can attest that the Star

Wars I loved is back. Less special effects; more characters the audience can connect with. I loved the trailers and the ads for the movie especially with the voice of Supreme Leader Snoke asking Kylo Ren if he feels the awakening of the force. I have been an ERISA attorney since 1998 and the last few years there has been another awakening that many in the retirement plan industry have felt. The Plan Sponsor awakens; can you feel it? If not, you may after reading this article.

For the article, click [here](#).

## 10 Liability Pitfalls That Retirement Plan Sponsors Should Avoid.

**Don't fall in the hole.**

Being a retirement plan fiduciary such as a plan sponsor or a plan trustee is like being a homeowner. Homeowners see their homes as a serious financial accomplishment and an important investment. Homeowners are unaware of the hidden liability pitfalls that homeownership entails, like lawsuits for those injured on their property or the



liability to trespassers who are injured because of an attractive nuisance like a swimming pool. The same can be said of a plan sponsor or a plan trustee that is unaware of the hidden liability in their roles as plan sponsors. Retirement plan sponsors

have important responsibilities and are subject to standards of conduct because they act on behalf of participants in a retirement plan and their beneficiaries. These responsibilities include: acting solely in the interest of plan participants and with the exclusive purpose of providing benefits to them; carrying out their duties prudently; following the plan documents; diversifying plan investments; and paying only reasonable plan expenses. While these duties seem pretty straightforward, there are certain instances where a plan sponsor is unaware that their action or inaction puts them at risk to liability from either plan participants or governmental agencies such as the Department of Labor (DOL) and the Internal Revenue Service (IRS). For plan trustees, that liability may be personal liability. This article details pitfalls that plan sponsors are usually unaware of, that exposes them to potential fiduciary liability.

To read the article, please click [here](#).

## Things They Forget To Tell You as a 401(k) Plan Sponsor.

**They never mention these things.**



When my wife and I bought our house, there were quite a few things that the previous owner forgot to tell us such as the fact they never bothered to pull the pipes from the dental office run by a previous owner 20 years earlier or all the bad carpentry work that the husband was a complete failure at doing it himself. When it comes to an employer sponsoring a 401(k) plan, there is no set of instructions given to you on how to properly

operate one. So this article is about the things they forget to tell a plan sponsor in operating a 401(k) plan.

To read the article, please click [here](#).

## When Retirement Plan Sponsors Can't Afford To Be Cheap.

**They can't afford it because it will cost them more in the long run.**

There is nothing wrong with being thrifty. You should never pay full price for something that you can get on a discount. Being thrifty is different from being cheap. Being cheap is about not wanting to pay for something just because you don't want to pay for it. I know full well, the difference between thrifty and being cheap. I'm a Vice President of a synagogue and there are people who want to have inexpensive Bar or Bat Mitzvahs for their children because of budget constraints



and there are those who are cheap who will spend tens of thousands on their children's event but balk at paying the extra \$250 to feed people after Synagogue

services. When it comes to being a plan sponsor, there is nothing wrong with being thrifty and paying less for competent plan services. There is something wrong with a plan sponsor being cheap especially when it's too costly to be cheap. This is an article about when plan sponsors should avoid being cheap.

To read the article, please click [here](#).

## Call an ERISA Attorney when the DOL or IRS pull you over.

**Don't talk to the IRS or DOL without an attorney.**



When you get pulled over by the police while driving, the best way to handle is to be pleasant and not be argumentative. You listen to the officer as to why he pulled you over. Being belligerent and non-cooperative will only lead you to a ticket.

When a plan sponsor is contacted by the Internal Revenue Service (IRS) or the Department of Labor for a questionnaire or a request for information, it's best for them to be cooperative and immediately have them contact an ERISA attorney. Being unresponsive or curt with them may lead them to sniff further and look closer at the plan for potential ERISA or Internal Revenue Code violations.

I had a client that had committed a serious breach of fiduciary duty and their cooperation of the Department of Labor (DOL) agent investigating the matter went a long way into correcting the error and avoiding some serious penalties. The DOL agent was very diligent in her role and was actively finding solutions that the client could pursue in rectifying this matter. Stonewalling the DOL would have been a headache and possible litigation by the DOL. In the end, we came to an agreement and rank and file plan participants were made whole.

A few years back, a potential client who advised me that the DOL was seeking information as to why the defined benefit plan that his bankrupt company had sponsored failed to prepare audits and 5500 filings for the past several years contacted me. This potential client refused to answer

the DOL's request and informed me that he had bankrupted the plan to benefit his personal expenses. I had advised him that he should immediately cooperate and the criminal attorney at my old firm recommended to same to avoid certain jail time for embezzlement. This potential client ignored our advice and declined our representation. He was arrested a year or so later and was convicted and sent to jail for 18 months. Had he played ball with the DOL instead of hiding it, he might have avoided jail time.

Cooperation with the IRS and DOL can go along with defusing problems that threaten the qualification of the plan and increase the liability for the fiduciaries. So if a plan sponsor is targeted for an audit or a request for information, the best bet is to contact an ERISA attorney. I hate to say it, but IRS and DOL agents act differently when working with an ERISA attorney than a client with no retirement plan background. Regardless of the problem, it's always best to cooperate. So if your client gets contacted by the IRS or DOL, pick up the phone and give an ERISA attorney like me, a call.

## **Plan Sponsors need to keep track of all plan amendments.**

**They need to keep track of all of them.**

I didn't have such a wonderful time at law school because I felt the administration and much of the faculty weren't honest when it came to the study of law and more importantly, our job opportunities. There was one law professor who was a shining light because he told it like it was and was just up front and honest with people. His name is Bernie Corr. I don't mind the C+ in Civil Procedure because he told us that some of us were getting that grade and I did better with him in two other classes.

History has shown that I love people who are upfront and honest about things and I show less love for those who hide the ball.

When it came time to a Bankruptcy seminar course, he told us that any changes in bankruptcy are a boon to bankruptcy law and was insisting that many of these changes might have to do with making money for bankruptcy attorneys.

Every 6-7 years every retirement plan has to be restated into a new plan document and every few years, there needs to be ancillary amendments. I admit that I steal professor Corr's line that all these amendments and restatements are to keep ERISA attorneys like me employed. Seriously, retirement plan laws change and plans have to be amended to reflect that.


For the past 10 years, there has been a host of plan restatements and ancillary amendments that have been required for all retirement plan sponsors. There have been so many ancillary amendments, that even I have to keep a full checklist of what was done. Plan sponsors are in worse shape because many don't have all the ancillary amendments (whether they were done or not and whether they were actually signed or not) and the Internal Revenue Service (IRS) knows that especially when it comes to



plan audits. Not having all the required plan amendments and restatements is an excellent way for the IRS to make a few shekels on penalties when auditing a plan.

So it's a good idea for a plan sponsor to take inventory of their plan documents and amendments to make sure they have a set that are up to date and correctly dated. If not, a submission to the IRS' voluntary compliance program beats getting penalized on an audit because it costs a lot less.

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