

# The Headache of 401(k) Plan Notices

By Ary Rosenbaum, Esq.

Being a 401(k) plan sponsor isn't easy and one of the biggest headaches is dealing with notices and required documents. Being an ERISA attorney for 24 years, the one area that most plan sponsors fail to fulfill their duties is the dissemination of required notices and documents, especially to former employees who still have a participant account balance in their plan.

## When an employee becomes a participant

When an employee becomes eligible to participate in the plan, you need to provide several documents. These documents will include the summary plan description, enrollment package, beneficiary designation form, and salary deferral election form. If your plan offers an automatic enrollment feature. You must give the employee a notice of at least 30 days, but no more than 90 days before you automatically enroll the employee and take out deferrals from their paycheck. If the employee is newly hired and your plan has immediate eligibility, then you must give the employee this notice on the date they are hired.

## Notice of an individual's benefits

You must provide an individual benefits statement (IBS) that shows the benefits earned by a participant and their vested amounts. With your 401(k) plan offering participant-directed investments, you must furnish individual benefits statements on a quarterly basis. The statement should identify the participant's account balance, vested amount, and the costs associated with the administration of the plan.

## Notice of distribution and that a lump sum is eligible for rollover

A participant has to receive this notice when they receive a distribution from your plan that is eligible to be rolled over to another plan or rollover individual retirement account. You are also required to offer a non-spouse beneficiary the opportunity to roll over the deceased participant's account balance and must notify the non-spouse beneficiary that the deceased participant's

their account in excess of your plan's cash-out limit (\$1,000 or \$5,000 usually). So they could keep money in their plan, but that would still require you to provide these former employees with notices and this is the area where plan sponsors forget that duty. Missing former employees is a priority for the Department of Labor (DOL), so that means it has to be a priority for you.

## Notice when the plan is amended

When the plan is amended or when the information in the Summary Plan Description (SPD) has changed (such as your address), participants have to receive a Summary of Material Modifications (SMM). The SMM must be provided no later than 210 days after the close of the plan year for which the modification was adopted. The SMM or changes in information in the SPD don't need to be furnished separately if the changes or modifications are described in a timely SPD.

## Notice when the end of the plan year has passed

When the end of the plan year has passed, participants have to receive a



Summary Annual Report (SAR). The SAR should include the following: administrative expenses incurred by the plan; the number of benefits paid to participants and beneficiaries; total value of plan assets; a pension plan's compliance with the minimum funding standards; and the right to receive a copy of the full annual report, or any part thereof. The SAR is provided the later nine months after the end of the plan year or two months after Form 5500 is due (if an extension has been granted by the Internal Revenue Service).

account balance is eligible for rollover. The notice should describe the effects of rolling an eligible rollover distribution to an IRA or another plan and the effects of not rolling it over, including the automatic 20% withholding. You must give the notice between 30-180 days before an employee receives a distribution. However, the employee may waive the 30-day period. If a participant dies, then his or her spouse or beneficiary, if unmarried, must receive this notice. Keep in mind that a terminated employee must consent to a distribution of

### Notice for safe harbor match 401(k) plans

When the plan is intended to be a safe harbor plan using a matching contribution, an annual notice needs to be provided to all employees eligible to participate in the plan. The notice must contain the following: the safe harbor matching formula used in the plan; the level of matching contributions, if any, other contributions under the plan, and the conditions under which they will be made; the type and amount of compensation that may be deferred; the method of making deferrals under the plan; the periods available for making salary deferral elections; the withdrawal and vesting provisions applicable to contributions under the plan; and how to obtain additional information about the plan. The notice has to be provided to each eligible employee within a reasonable period (at least 30 days and not more than 90 days) before each plan year and other times where an employee doesn't receive the annual notice because he or she becomes eligible after it has been distributed.

### Notice of blackout period

If your 401(k) plan changes providers, the plan might impose a blackout period where there is a temporary suspension, limitation, or restriction on the ability of participants to trade on their account and get a loan or distribution. When a blackout period of three or more business days is imposed, affected participants and beneficiaries have to be notified by you. A blackout notice has to contain information on the expected beginning and end date of the blackout. Each participant must receive a blackout notice at least 30 days, but not more than 60 days, in advance of any blackout. If issues pre-

vent you from sending the notice out at least 30 days prior to a blackout period, you must provide the notice as soon as administratively possible under the circumstances.

### It can be done electronically

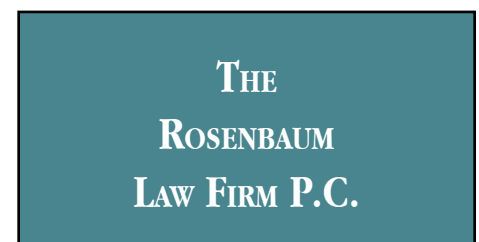
Until 2020, notices had to be sent via paper handout or mail (especially to former employees), which is hard to believe. The DOL finally allowed for email disclosure. However, to take advantage of it, you need to first notify a plan participant by paper: 1) that some or all plan documents will be furnished electronically; 2) that they have the right to request and receive paper copies (or to opt-out of electronic delivery altogether), and 3) of the procedures for exercising such rights. The problem with e-mail disclosure is when an email bounces back, especially with former employees you have lost touch with. Email delivery systems must include invalid electronic address alerts. Once an email bounces back, the problem must be fixed by sending the notice to a secondary email address on file

receive their benefit. If you can't locate former employees, you need to identify them and go through a procedure to locate them.

(work email vs. personal email). If this issue is not able to be resolved, the individual must be treated as if they had opted out of electronic delivery and be sent a paper version of the documents as soon as possible, until a new valid email address has been obtained.

### Keep Track of Former Employees

Always keep tabs on former employees with account balances in your plan. Utilize the cash-out limit provision of your plan to expunge those participants below the cash-out limit by notifying them that you will be distributing their benefit. If they are above the limit, always contact them if they want to receive their benefit.



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