The 3 Cs: Why 401(k) Plan Sponsors Can't Afford to Be Cheap, Controlling, and Clueless

By Ary Rosenbaum, Esq.

After close to 30 years in this business—wearing the hats of TPA employee, ERISA attorney, plan document drafter, and occasional therapist to frantic plan sponsors—I've seen it all. The horror stories, the lawsuits, the missed deferral opportunities, and more poor fund lineups than I can count. But if there's a recurring theme in this industry, it's that too many plan sponsors are completely asleep at the wheel. They want the best for their employees, sure. But then they get cheap, they get controlling, and worst of all, they get complacent. That trifecta isn't just bad for business—it's a roadmap to fiduciary liability and potential disaster. Let's call it what it is: negligence in slow motion.

Complacency: The Silent Killer of 401(k) Plans

Complacency is what happens when plan sponsors assume that no news is good news. When they don't review investments. When they haven't benchmarked fees in a decade. When the fiduciary committee hasn't met since the Bush administration—but hey, nobody's complained, right? Wrong. Silence doesn't mean everything's fine. It usually just means no one's paying attention—not your participants, not your advisor, and certainly not you. But trust me, the DOL or an enterprising class-action firm will definitely start paying attention once they smell blood in the water. Fiduciary duty isn't about sitting back and coasting. It's about prudence and loyalty—two things you can't claim if your entire oversight process is a quarterly "check-in" call you take on speakerphone while checking email. And let's be crystal clear: the excuse of "we didn't know" isn't a get-out-of-jail-free card. It's an engraved invitation to a deposition.

Cheap Isn't Prudent—It's Lazy

One of the most aggravating things I see as an ERISA attorney is how some plan sponsors treat their retirement plan like a garage sale. "That advisor charges $10,000 a year? Too much. Let's stick with the one who comes in under $2,000—he threw in free donuts!" Folks, this isn't about free donuts or cutting costs to save a few bucks. A 401(k) plan isn't a cable bill you shop around every couple of years—it's a legally protected trust, governed by one of the most complex pieces of federal law. f you're running a $5 million plan and balk at paying $750 for a Retirement Plan Tune-Up, you're missing the point. That $750 could uncover major compliance issues, excessive fees, or a fund lineup that looks like it was chosen by a dartboard. The real cost isn't the fee—it's the risk of getting sued because you didn't know what you didn't know. "Free" is rarely free in this industry. Hidden fees, revenue sharing, conflicts of interest—those come with a cost, and it's your participants footing the bill.

When Control Freaks Run the Show

Now, let's talk about control. Some plan sponsors think they're Warren Buffett because they read a finance article in Forbes. They override their advisors, pick exotic funds they saw on CNBC, and dictate plan operations like it's their personal 401(k). It's not. Being a control freak without expertise doesn't make you prudent—it makes you dangerous. I've seen sponsors unilaterally swap out target-date funds based on "a gut feeling." Others delay compliance testing because they "don't trust" the results from the TPA. Some even use their plan as a personal sandbox to play asset manager. That's not fiduciary oversight—that's malpractice. You don't have to know everything about ERISA. But the law says if you don't, you need to hire someone who does—and listen to them. Micromanaging a plan you don't understand isn't being hands-on. It's setting yourself up for a lawsuit with your name on the top of the complaint.

Mismanagement in Plain Sight

You'd be amazed how many plans are mismanaged and no one notices—until the IRS or DOL does. I've reviewed hundreds of plans over the years. I've seen eligibility provisions that contradict the SPD. I've seen deferral failures swept under the rug, investment lineups that haven't been touched since the iPhone 4, and service providers who got the job because "they sponsor our charity golf outing." Just because the plan runs without someone screaming doesn't mean it's running well. Most ERISA mistakes are discovered in audits or lawsuits, not because someone in HR suddenly developed a passion for Section 408(b)(2). And don't get me started on fiduciary committees that exist in name only. If the only record of your fiduciary oversight is a meeting calendar invite from 2019, you've got a problem.

Do Better—Because You Have To

Here's the part where I could say, "It's not too late." But the reality is: it might already be too late if you're on autopilot. Want to do it right? It's not rocket science.

Here's what you do:

- Benchmark your fees—at least every 3 years, but preferably annually.

- Hire good providers—and more importantly, trust them.

- Follow your investment policy—and if you don't have one, write one.

- Train your fiduciary committee—yes, training is a thing.

- Document everything—because memories fade, but memos don't.

And don't be afraid to spend a little money for good advice. It's a lot cheaper than dealing with a lawsuit or DOL investigation. A 401(k) plan is not a "set it and forget it" appliance. It's a living, breathing employee benefit that requires care, attention, and a little humility. You're not expected to be perfect—but you are expected to be responsible. So don't be cheap. Don't be a control freak. And don't be complacent. You owe your participants more. And frankly, you owe yourself the peace of mind that you're not one bad audit away from disaster. Because let's face it: the DOL doesn't hand out participation trophies. They hand out subpoenas. And you know what else? When something does go wrong—and trust me, it eventually will—the same plan sponsors who were too cheap, too controlling, or too indifferent are the ones who panic and start pointing fingers. "Wasn't that the advisor's job?" "I thought the TPA handled that." "Why didn't anyone tell me?" But the blame game doesn't work when you're the fiduciary. This is your responsibility. You signed on for it the moment you set up the plan. If you didn't know that, now you do. And now you have no excuse.

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