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THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

That Fiduciary Warranty Is Not Worth The Paper it's Printed On.

They are pretty much worthless.

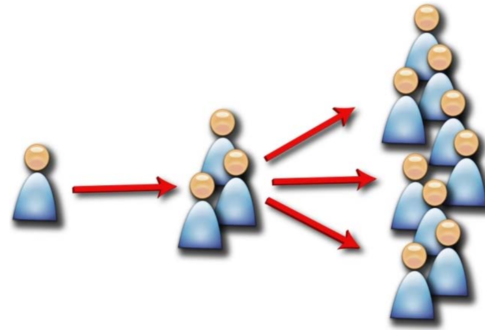
A 401(k) plan sponsor is also a plan fiduciary and they have the responsibility to prudently run their plan. One major issue for a plan sponsor to figure out is which plan providers will mitigate some of their liability by serving in a fiduciary capacity. The problem is that some plan providers are marketing a fiduciary warranty and it gives many plan sponsors the false impression that the provider offering this warranty is serving in a fiduciary capacity and offering some level of liability protection. To cut to the bottom line, they are not and they are not. This article is about the worthlessness of 401(k) Fiduciary Warranties and why they aren't worth the paper they are written on.

For the article, click here.

The Word On The Street On What 401(k) Plan Sponsors May Need.

The new things everyone is talking about

The greatest thing about the Internet is the distribution of information that people used to have to rely on an Encyclopedia or other reference materials to find out information on a specific topic. This is so true of retirement plans and plan sponsors finally understand their role as plan fiduciaries out. Information on the Web and in articles like these are eye openers for plan sponsors in managing their plan. Thanks to the web and through great materials by plan



providers, plans sponsors are finally understanding what they really need to manage their 401(k) plan. Too many don't, so this article is talking about things that 401(k) plan sponsor want or may need in running their plan.

To read the article, please click here.

Never Hire Your Friends Or Family As Your Retirement Plan's Financial Advisor.

Never give anyone the wrong idea.

I live in an unincorporated village in Nassau County called Oceanside. We have a school board there that doesn't have issues about hiring friends and family for teaching positions and low paid aide positions. In fact, 3 out of the 7 board members have children who work for the district and were hired after their parents were elected to the school board. The board and the superintendent (all of who belong to the same civic organization) claim that there is nothing wrong with nepotism. Hiring someone who is a relative gives the impression that something underhanded was done and that the hiring process isn't above question. While there is nothing legally wrong with the school board hiring a relative, retirement plans can't serve as a patronage mill as ERISA makes it clear that retirement benefits must be for the exclusive benefit of its participants. So "juicing" your buddy in as the financial advisor or ERISA attorney or third party administrator (TPA) contradicts the exclusive benefit rule and would certainly be considered a breach of fiduciary duty. So the selection of your relative or buddy as a plan provider has two landmines that might not be avoided, the selection might be a prohibited transaction and/or breach of fiduciary duty.

To read this article, please click here.

The one list of TPAs that plan sponsors should ignore.

Kind of meaningless.

What's the best hamburger out there? There is a burger fad out there with so many expanding chain and franchised restaurants, so there are many choices out there. I'm sure there are thousands of places better than McDonald's, but there

are more McDonalds restaurants than any burger fast food restaurant. The folks at McDonald's don't say they're the best burger out there, but they may say they're the most popular. Bigger doesn't mean better, popular doesn't mean better.

So when it comes to choosing a third party administrator (TPA), the one list that plan sponsors should ignore is the list that shows the TPAs that are the biggest with most plans and/or most assets under administration. These lists are great for bragging rights, but they're an awful idea for selecting a TPA. Finding the right TPA is like tailoring a suit, it's all about fit. Picking a TPA just because they have so many plans and/or assets under administration is just silly.

There are many reasons why you should choose a TPA, just because they're big isn't a good enough reason.

Get that late 5500 filed.

Don't procrastinate, get it filed.

I used to have this recurring dream that I was back in college and it was my last semester. The dream was that there was this one class that I didn't attend all semester and the finals were around the corner. Someone pointe doubt that the dream/nightmare was a fear of failing, perhaps they were right.

If I was a plan sponsor and I didn't have the required Form 5500 filed, I don't know if I'd sleep at night because that's a nightmare that can't go away. The reason why it's a nightmare is that if it's not corrected through the Department of Labor (DOL) Voluntary Compliance program and the DOL hits you with a penalty, the penalty for a late filing is $2,063 per day. If I knew my plan didn't file the Form 5500 because one wasn't completed, I would rush to call a third party administrator to have it done because you never know when the DOL will send out that letter asking for the filing.

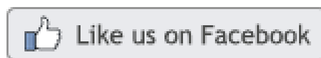
It's the most avoidable plan error and it's amazing how many plans don't file one on time for one reason or another. Then again, how many college students don't attend a class all semester and show up for the finals?

Hardship Provisions Will Change.

Changes were a part ofbthe latest government funding agreement.

As part of the budget agreement signed By President trump on February 9, some additional provisions have been added including changes to the hardship provisions for retirement plans.
The legislation requires the Internal Revenue Service to change its guidance and allow employees taking hardship distributions from a retirement plan to continue contributing to the plan without a six-month suspension. The revised regulations will apply to plan years beginning after Dec. 31, 2018.

The legislation also changes the rules relating to hardship withdrawals from 401(k) plans to permit employers to extend hardship distributions to amounts not previously permitted (QNEC and QMAC contributions). It also would remove the requirement that forced a participant take a loan before taking a hardship withdrawal. The provision applies to plan years beginning after Dec. 31, 2018.



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