When You Should Fire Your Retirement Plan Providers

By Ary Rosenbaum, Esq.

I am a huge Mets fan and a big fan of the 1986 Champion New York Mets. One of the biggest mistakes the Mets ever made was firing their manager Davey Johnson after several disappointing finishes in 1987, 1988, and 1989. Before he was fired, a caller asked Davey on sports radio whether he thought he was hired to be fired. Maybe it was a silly question, but almost all business relationships must come to an end. For a business relationship that needs to end, there needs to be signs for one party to decide that it's time to say goodbye. So thus article is about when it's time to end your relationship with your plan provider(s).

They don't provide you with fee disclosures

Thanks to the Department of Labor (DOL) fee disclosure regulations, any retirement plan provider that charges your plan more than $1,000 needs to provide you with the required disclosures of their fees. When you get the fee disclosures, you need to review them and benchmark them to determine whether they are reasonable for the services provided. So what happens if your plan providers don't bother giving you those disclosures? If you don't get them, ask for them. If you still don't get them, you'll need to contact the DOL plus you are going to have to fire that provider. If you fail to follow these steps set forth by the DOL, you run the risk that your transactions with the plan provider are considered prohibited transactions. The problem with having these transactions considered as a prohibited transaction, there'd be financial penalties set by the DOL and as a plan fiduciary, you will be responsible for paying the bill. That's not fair, but that's the life of a plan sponsor/fiduciary because you have the highest duty of care in law and equity. A plan sponsor isn't supposed to be like a diner at a restaurant waiting for the waiter to bring out the check, you have to go out and demand it. You shouldn't have the hassle of tracking down your plan provider to do what they're supposed to do and not get yourself in hot water because you didn't pursue them. If a plan provider can't do something as basic and as required as providing a fee disclosure, there is no reason to keep such an unprofessional provider.

They're not doing the basics of their job

Would you use a hairdresser who won't cut your hair or a dentist who doesn't look in your mouth? Of course not, but there are so many retirement plan sponsors who pay plan providers that don't do their job. A financial advisor has to help you with developing an investment policy statement (IPS), selecting and replacing the plan's investment options based on that IPS, as well as educating plan participants if the plan's investments are directed by plan participants. If your financial advisor never shows up to see you every 6 months or so and hasn't replaced a plan investment within the past year or so, then they aren't doing their job. The same can be said about a third party administrator (TPA) who never prepares a valuation report for you or doesn't make sure your plan is in actual compliance. You may laugh, but I have seen too many plan providers that don't do the basics of their job. The problem with having a plan provider who doesn't do the basics of their job is that you're on the hook if the plan isn't in compliance because despite outsourcing the job to plan providers, you don't outsource that liability. So it's important that you make sure that your plan provider does the basics of their job. Otherwise, it's time for them to hit the pavement.

They aren't in communication with you

My great grandmother Bertha Urbinder once said: "don't run after the carriage if it's not going to pick you up." She didn't live long enough to see ERISA come into play, but the fact is that you shouldn't be running after your plan providers. You hired them to do a job and part of their job is to keep in communication with you. There are so many financial advisors out there who never communicate with their clients and just collect their quarterly fee. I have called these financial advisors "milk carton advisors" because they have gone missing for so long that a plan sponsor should pick their picture on a milk carton. There are so many TPAs out there that are not in communication with the plan sponsor when it comes to the day-to-day administration of their retirement plan. The best TPAs are proactive, where they communicate with their clients before things can go wrong. The not so good TPAs are reactive, which means that they only communicate with their clients after something goes wrong.

They make too many errors and have too many excuses for them

Nobody is perfect and the fact is that no matter how good your retirement plan provider is, errors do happen. The mechanics of a retirement plan are highly intricate, so there are times when things do go wrong. The difference between the providers you should get rid of and the providers you should keep based on how they take care of errors. Good providers make few errors and take the blame for their mistakes. Bad providers make many errors and always seem have a scapegoat to blame for their transgressions. The problem with having a plan provider that makes too many plan errors is that you usually only know when it's discovered on an Internal Revenue Service audit or when you change providers. Since you're on the hook for any errors, it's important to conduct an independent plan review. Heck, I know an ERISA attorney who could do that for you for $750 (cheap plug here).

They are related to you or someone who works for you

Being a plan sponsor is a tremendous responsibility and you must act in a prudent manner. Plan providers must be screened carefully through a process involving the interview of other competing providers. Simply handing the role of financial advisor to someone who is related to you or a participant may be a breach of the fiduciary's duty of prudence in selecting a plan provider. It also doesn't pass the smell test and when there is smoke, the Department of Labor (DOL) and/ or the Internal Revenue Service (IRS) may think there is fire. You need to retain responsible providers, monitor them, and monitor their fees. So why should you have a plan provider just because someone there is someone's cousin? There are quite a few hundreds of thousands of plan providers not related to anyone who will work for the plan sponsor, so I would recommend hiring someone who is not related to anyone connected with you.

They are behind the curve

The retirement plan business is a quick changing business. Someone who has been involved in it for a few years could attest that to you. So whenever there is change in how retirement plans work or the duties of plan sponsors, you need to rely on your plan providers to tell you that. Any good plan provider will alert their clients to any changes to how their retirement plan will work and offer suggestion and solutions to these changes so a plan sponsor doesn't get paralyzed like a deer caught in the headlights. If a plan provider can't let you know within a couple of months of any substantive change with retirement plans that will impact your role as a plan sponsor, it maybe a sign that this provider is behind the curve and not to up to the task of being a retirement plan sponsor.

Their fees are too high for the level of service they are providing

When it comes to plan expenses, you have a duty to pay only reasonable plan expenses. That doesn't mean you have to pay the lowest plan expenses, it just means that the fees you are paying are reasonable for the services you are being provided. If you want white glove treatment, you have the right to pay extra for it. However, if you're getting bare bones service from your plan providers, then you must be paying very low expenses. So while you can pay high plan expenses, you can't do that if you are getting a very basic level of service and the only way to do that is to benchmark your fees against what other providers are charging and providing.

They won't hold your hand

I'm not trying to suggest that retirement plan providers hold your hand literally. Unless you are involved in the retirement plan business or have a certified employee benefits specialist on staff, you will need plan providers who will help you manage the process of being a plan sponsor. A TPA who gives you an employee census report and tell you to label everyone who is a key employee without tell you what a key employee is, is not going to be a TPA worth keeping. You need plan providers who will explain their role and help you when you need to help them with information that they need to complete their jobs. Not explaining your role is only lead to your frustration and possible plan errors. You need to get rid of retirement plan providers who don't want to properly explain what needs to be done in the day-to-day process of your plan's administration.

THE ROSENBAUM LAW FIRM P.C.

The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557

http://www.therosenbaumlawfirm.com
Follow us on Twitter @rosenbaumlaw