Dangers That As A 401(k) Provider You Need To Avoid

By Ary Rosenbaum, Esq.

It can take almost a lifetime to build a sterling reputation in the retirement plan industry as a plan provider and it can be destroyed in an instant. The retirement plan business is very competitive and you can't afford any problems that can negatively impact your business. There are dangers every day in the retirement plan business and you owe it to yourself and your employees in avoiding dangers that could lead you to exit the retirement plan business. This article is about the dangers to your retirement plan practice that you need to avoid.

Checks and balances on employees

Years ago, I worked at a third-party administrator (TPA) and a plan administrator was caught trying to transfer a participant's assets into his own Individual Retirement Account (IRA). How did he get caught? Not by any of our policies and procedures. The administrator was caught by the plan custodian and only because he got the account number wrong on his IRA. The administrator was fired, but no arrest was made because the chief operating officer was too embarrassed that the administrator almost got away with it. Employees are hard to manage; I know because I used to be an employee. While it's important to have a great staff, it's also important to make sure that you don't have any rogue employees who will expose the fact that your practice as a retirement plan provider is closely related to millions and millions of plan assets. You can limit the chance an employee can become a millionaire by stealing assets by putting policies and procedures in place that limit the exposure of having a single employee have access to participant accounts that they can convert to their own benefit. Something as simple as two approvals on any distribution requests or levels of approval for certain transactions can cut down a lot and fraud. Theft isn't the only concern; employees can just go rogue by committing multiple errors or behaving poorly in the customer service area. Again, these things happen when you don't have proper policies and procedures in place.

For employees who commit multiple errors, this might be a result of poor training. It is far easier to lose clients than it is to gain them, so it's important that you run a well-run ship by making sure that your employees are kept in check and are not putting you in harm's way. Being in the retirement plan business is very competitive and you can't afford to have staff that commits reckless acts. A staff you can't control can hurt you in the pocketbook and mar your reputation as a plan provider in the eyes of other plan providers and plan sponsors.

Not vetting who you refer and who you work with

Over the course of the last 20 years as an ERISA attorney and the last 9 years in my own practice, I have worked with hundreds of plan providers in one fashion or another. I may have worked in conjunction with them, I may have been referred by them, or I might have referred business to them. Most of these relationships have been rewarding and twice, it's been a problem when you know people accused of stealing millions. If you check Google, you will find that I replaced Matt Hutcheson as a fiduciary on the one multiple employer plan he didn't steal from. You'll also find out I said some nice things before it was clear that a certain dentist was right, that Hutcheon stole millions of dollars. I also once wrote an article used by Vantage Benefits before they were accused of stealing millions from their plan sponsor clients. I'm telling you this as a word of caution, you need to vet any plan provider you work with or refer business to. If I would have Googled the owner of Vantage Benefits, I would have found out that he was sanctioned by the Securities and Exchange Commission. While my reputation appears unscathed by working with two plan providers who went rogue, the point here is you have to be careful with who you work with and who you refer because you might not be as lucky as I was. Working with and referring plan providers don't have to go south because of the illegal activity, it can go bad just by the incompetence of the other plan provider. How many times has a financial advisor been fired for referring a TPA who did a poor job for a plan sponsor client? One too many. That's why I'm amazed how most financial advisors don't pay attention to the TPA that they refer their plan sponsor client to especially when that TPA isn't very good. As a plan provider, you really need to check on the other plan providers you refer business to because you don't want the bad work of others to reflect badly on you. You can stay out of trouble by not being involved with providers that are trouble.

Not living on the edge

We all know the story of Icarus who flew too close to the sun. As a plan provider, not flying too close to the sun is not providing services while living on the edge. It means when it comes to the law and regulations that cover retirement plans, it's best not to provide service that is on the edge and cross the rules on what is qualified plans and what is not. I've seen too many plan providers that get too aggressive in the reading of the laws and regulations that cover retirement plans. There are so many instances where a plan provider got too close to the edge and ended up getting a lot of plan sponsors in trouble along with themselves by being too aggressive. Often, I've seen these abuses with the sale of insurance in qualified plans. Sometimes, I've seen it in compliance testing where the TPA is too aggressive when it comes to completing testing. Regardless of what it is, you can certainly stay out of trouble by not providing services that are on the cusp of being targeted by the Internal Revenue Service and/or the Department of Labor. When agents from those agencies come knocking on your door, it's going to be too late for you. It's best to work within the wide space allowed by the law and the regulations and it might make sense to speak to ERISA counsel to make sure you drive your practice between the lines.

Getting into trouble on social media

The little fights we all had in school whether it was verbal or physical was when we were kids, we're not kids anymore. We live in the Internet age and we have this thing called social media. Social media is an effective way of building your practice, the fact that you're actually reading this article is proof of that. While social media is great for building practices, a dumb social media post can sink a business. One look through Facebook and Twitter, you can see posts by businesses that go completely off track and sink the business for good just because they didn't know how to handle their social media posts. How you deal with customers, how you deal with the competition, and how you deal with fellow plan providers says a lot about you. If you handle yourself in a professional manner, you can stay out of danger. However, if you decide that your social media handles are great ways to insult people or a great way to talk about incendiary political issues, you're going to make a mistake that is going to harm your business. Let your competent services do the talking, not social media posts that go off the rails.

Not sensing change

For most plan providers, the biggest danger out there is not sensing a change within the industry. In western movies, you always would see the scene of someone listening to the ground to hear if any horses were approaching. As a retirement plan provider, you need a similar approach by looking around and trying to sense what's going on in the industry. Over the last 20 years, I've seen retirement plan providers who went belly-up or exited the retirement plan business only because they failed to adapt to a changing environment. A perfect example is when fee disclosure regulations were finally effective in 2012. Plan providers who adapted to a transparent fully disclosed model did a lot better than those who waited until disclosures were implemented or those who decided to invent fees to offset lost revenue sharing. The retirement plan industry is fluid and you need to understand how the market is shaking. You need to be ahead of the curve instead of being behind. You need to custom make your practice to a business that is always changing. You can't keep your head in the sand or being arrogant to think you what's best.

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