

THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

Concepts You May Not Be Aware Of As A 401(k) Plan Sponsor .

Quite a few things out there.



As a child, I was never taught the birds and the bees. I was actually handed some cartoon book from my parents when I was young. My parents thought it was hilarious that they had to hand me a book about where I came from even though I had already guessed right. As a 401(k) plan sponsor, you're always on the end of a sales pitch and you may not understand some basic, eye opening concepts about your 401(k) plan. While I don't have a cartoon book

for you to understand your role as a 401(k) plan sponsor, this article will make you understand some interesting concepts that you had no idea of until you read to the end.

For the article, click [here](#).

How Keeping Good Records Can Minimize A Retirement Plan Sponsor's Liability.

Good housekeeping goes a long way.

Besides being a religious text, the Bible is essentially a history book detailing major religious events like the Exodus from Egypt. A history book is a record of events that can be passed down from generation to generation. Recordkeeping is like preserving history and while it's not the same as a Bible, a plan sponsor would be wise to keep good records. While it's not going to be treated on the same level as Moses parting the Red Sea, keeping good records will help plan sponsors limit their liability as plan fiduciaries. This article is about how plan sponsors can limit their liability by keeping good plan records.



To read the article, please click [here](#).

As A 401(k) Sponsor, A Class Action Lawsuit Is The Least Of Your Legal Worries.

So many more threats are out there.



Having been in my own practice for over 6 years, it's a broken record hearing from 401(k) plan sponsors on how they have nothing to fear about being sued since their plans are small potatoes. The problem with that view is that a big class action lawsuit is the least of your worries as a plan sponsor. This is why you need to be vigilant and diligent in your duties as a retirement plan sponsor. So this article is about the many threats that could hurt you in the

pocketbook when it comes to your 401(k) plan.

To read the article, please click [here](#).

Yes, a Fiduciary was held personally liable.

It happened, yes it did.

In my practice, I always talk about how plan fiduciaries can be held personally liable for any issues regarding their retirement plan. Many plan sponsors just don't pay any attention to that threat until they see it happen to themselves.

However, personal liability does happen and it just happened in a case involving an Employer Stock Ownership Plan (ESOP).



In Mississippi, in the case of *Perez v. Bruister*, Herbert C. Bruister, owner of a DirecTV installation company accused of mismanaging an ESOP, must turn over three vehicles (which includes two Lexuses) as part of a \$6.5 million judgment (plus \$3 million in attorneys' fees). Bruister was held to have caused the ESOP to purchase his company stock at an inflated price. Bruister has to also cooperate with participants and the Department of Labor in selling his multimillion-dollar life insurance policies, which he offered as security pending an appeal. The case has been dragging on for years, so the Court refused to take Mr. Bruister's pleas of poverty or lack of a car to reduce the award against him.

So I often talk about how plan fiduciaries can be held personally liable, well here is proof that it can happen.

Automatic enrollment is growing in 401(k) plans .

It's becoming bigger and bigger.

The Plan Sponsor Council of America's newest annual report shows that in 2015, 25.5% of small 401(k) plans offer automatic enrollment. In their survey, small plans are considered



plans with less than 50 participants.

While the typical default rate of automatic enrollment is 3%, 51.6% of automatic enrollment plans have a default rate greater than 3%.

For smaller plans that don't have a safe harbor plan design and have potential plan testing issues, automatic enrollment is a no brainer since it helps boost the deferral rate for non-highly compensated employees and the rules concerning them give enough liability protection for plan sponsors to offer them.

So dear plan sponsors, you don't have to get the cheapest provider, just a competent providers who charges a reasonable fee, OK?

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