THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

The Plan Providers That A 401(k) Plan Sponsor Needs.

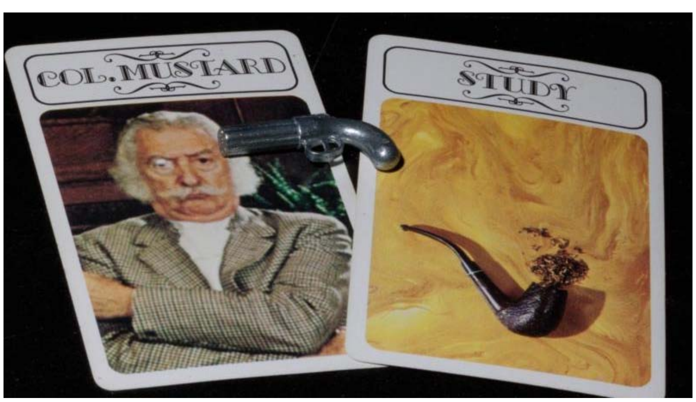
A list, all of them.

When an employer decides to start a 401(k) plan, one of the biggest problems out there is that they don't know who they need. They know that they need someone to help on their retirement plan, but they don't know who. One of the secret recipes to having a retirement plan that is run effectively without liability issues and compliance problems is finding good plan providers for the plan. Plan sponsors need to make solid choices of retirement plan providers because it's their neck on the line if they don't. So this article is about the essential plan providers to hire and what to avoid when hiring them.

For the article, click here.

Clues That There are Problems With A 401(k) Plan Provider.

Things to look out for.



When it comes to illnesses and diseases, there are usually warning signs out there. Whether you can come out healthy from a debilitating illness or disease is dependent on whether you can tell the warning signs. I've seen people make miraculous recoveries and I've people die needlessly based on whether they caught the symptoms early or ignored them. When it comes to 401(k) plan providers, you need to know the warning signs as a 401(k) plan sponsor before some compliance issues becomes greater than it has to be. This article is about clues if there are issues with the plan providers you selected.

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

Mistakes An Employer Should Avoid Starting A 401(k) Plan .

Lots of errors you should avoid doing.

I'm a firm believer that you need to get off on the right foot if we start something new. Otherwise, you have tough time recovering. When I talk about getting off on the wrong foot, I always remember wanting to get involved with Hillel, the Jewish student organization at college. They had a welcoming barbecue the first weekend of school and after I arrived15 minutes after it started, they ran out of food. The students who had no intent of joining Hillel because they weren't Jewish had hamburgers and hot dogs and all I got was a stale bagel. Needless to say, I never joined Hillel. Being a retirement plan sponsor is a bigger deal than joining Hillel especially when you factor in the responsibility of being a plan fiduciary, so it's important that the employer gets on the right foot and avoids making mistakes in starting a 401(k) plan.

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

The easiest mistake most 401(k) plan sponsors make.

Yet, not many pick up on it.

The road to hell is paved with good intentions and that's how I feel when it comes sometimes to what a 401(k) plan sponsor does. Yet, there is an error that too many 401(k) plan sponsors do that the Department of Labor (DOL) has been quite vigilant for the last 10 years or so.

The DOL has guidelines on how long an employer can hold participant elective deferrals before depositing them into the plan. The general rule requires that contributions and loan repayments be deposited into the plan as soon as it is reasonably possible to segregate them from the company's assets, but no later than the 15th business day of the month following the month amounts are withheld from pay. That was and still is the guideline, but the DOL added clarification over that 15th day rule. The 15th business day rule isn't a safe harbor and never really was. The DOL says that the "real" deadline is the earliest date on which contributions can be segregated and may look to prior payrolls to determine what is possible. So the real rule is deferrals should be in by the next payroll unless there are some extenuating circumstances.

I've seen so many employers flout those rules, usually by a day or so or a week. The problem is that while's it usually doing harmlessly, this has been one of the linchpins that the DOL has factored on especially in their audits. However, they have a correction program that is easy to fix those delinquent deferrals. Of course, most plan sponsors only know they broke the deferral rule once they're caught on audit and it's too late for a voluntary correction program.

So as a plan sponsor, be vigilant about those deferrals because it's an easy and avoidable mistake to make. The DOL isn't always easy to deal with.

The real reason why bad funds are in 401(k) plans.

It's not what you think.

Researchers once looked at some data to try to figure out why many poor 401(k) investment choices linger on fund lineups. The researchers identified one fairly clear explanation: a sub-par fund is much more likely to stay on the menu if it's managed by the mutual-fund company that's helping administering the plan.

While it's very easy to point to the Fidelitys and American Funds of the world for blame, the fact is that regardless of whether you are dealing with a bundled or unbundled product, poor investment options are dependent on the work or lack thereof of the financial advisors and/or the plan fiduciaries you hired as a plan sponsor.

My old law firm was using an open architecture platform where they had a fund lineup that hadn't changed for 10 years. The culprit? The fact that they never bothered to hire a financial advisor until I told them it was a good idea. The fact that they didn't hire any of the ones I recommended, that's another story.

There are too many plan sponsors who don't have a financial advisor and there are too many financial advisors who don't do enough of a credible job to merit the fee they are getting.

Perhaps plans on mutual fund company platforms are more likely to have stinky fund lineups, but it's still dependent on a plan sponsor and/or financial advisor not doing their job.

Even if you're doing your job as a plan sponsor, you still can get sued.

A lawsuit is something you may not be able to avoid despite all the good work.

The fact is that sometimes, bad things happen to good people. That can be said about retirement plans and the good plan sponsors and providers who do their job. No matter how great a job you do, the threat of potential liability is always there.

No matter how you take care of your fiduciary responsibility and no matter how professional you are won't preclude someone from suing them.

Just because a plan participant doesn't really have a case against you or a plan provider that is doing their job, doesn't mean they can't sue. Competence doesn't preclude frivolous lawsuit or litigation that has very little merit. Competence will only mean that there will likely be no liability, just the headache of a lawsuit which can hurt you if you don't have fiduciary liability insurance.

I know a fiduciary who was sued because the previous plan fiduciary stole money the year before. These things happen because sometimes when someone hires an overly ambitious litigator, people who get sued when they do nothing wrong.

We can talk about how plan sponsors and providers can minimize their potential liability, but they can never eliminate the threat of litigation.

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