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THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

401(k) Plan Sponsors Should Focus On What The Government Is Focusing On

In the movie Casino, Robert DeNiro as Sam "Ace" Rothstein wanted to take on the Nevada Gaming Board after they denied his request for his license. Andy Stone, a Teamster controlled by the Mafia and played by Alan King told him it was a bad idea: "The old man said, 'Maybe your friend should give in.' And when the old man says 'maybe', that's like a papal bull. Not only should you quit, you should run!" As a 401(k) plan sponsor, you're concerned with a lot of things as a plan fiduciary. However, the Internal Revenue Service (IRS) and Department of Labor (DOL) have covered quite a few topics to focus on. Like with the old E.F.Hutton commercials, treat the IRS and DOL like an E.F. Hutton broker, so listen when they talk.

To read the article, please click here.

Plan Document Foul-ups Can Cost You As A 401(k) Plan

Sponsor

I once joked that if you wanted to hide something from somebody when I worked at a third-party administrator (TPA), you should hide it in a plan document file. Seriously, as a plan sponsor, there are many things you don't know about your plan document and you really should because the plan documents could be a major culprit in what ails your 401(k) plan.

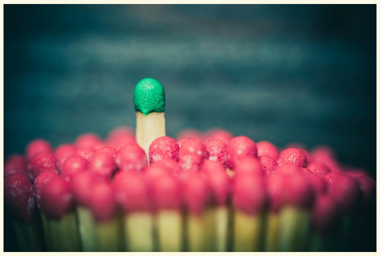
To read the article, please click here.

The Mistakes Employers Should Avoid Starting A 401(k) Plan

I'm a firm believer that you need to get off on the right foot if you start something new. Otherwise, you have a 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 arrived 15 minutes after it started, they ran out of food. The students who had no intention 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 the mistake of starting a 401(k) plan.

To read the article, please click here.

There is a difference between TPAs



In any service industry, the quality of service and price can be far and wide. While people say that I focus way too much on the workings of the third-party administration (TPA) business, I have more experience in that field as an ERISA attorney and former employee of a couple of TPAs.

People often ask whether as an ERISA attorney, I work as a TPA as well. I quickly state no, let the folks who know what they are doing do what they are doing. I have too much respect for the work of TPAs to be in that business, which I find gets too much blame and not enough credit, at least for the good ones.

However, looking at the TPA business, I always notice the wide difference in pricing, but more about the wide difference in service. For example, I have a client who clearly was taken advantage of by a TPA that is really in the business of selling insurance, with the administration just being treated as an ancillary service. The clients were sold a couple of life insurance policies that the company could no longer afford with a special sub-trust that the Internal Revenue Service no longer finds special.

I have another TPA looking at the plan, which may or may not charge the same price, but offering an exit plan to get out of the plan that is a half million in the hole. The potential new TPA remarked how the plan should have winded down earlier and wondered why the current TPA/ snake oil salesman didn't advise the same. It's hard to when you really aren't in the TPA business and are really in the insurance selling business because terminated plans don't pay administration fees or pay premiums.

When it comes to finding the right TPA, price is important, but the quality of service is the difference maker to me.

Focusing just on fees, blinds you

If you're a closely held business or not, changes do happen. Whether it's leadership or who serves as your plan's trustee, change will likely happen. The problem sometimes is when the plan document has been updated to reflect who the current trustees are, yet the plan custodian doesn't. That could certainly be a problem if one of the trustees left on acrimonious terms and wants to go to business for themselves and take a distribution that they weren't entitled to.

So if you make a change of trustees, also make sure that your third-party administrator and plan custodian know as well, so the records and signings cards are updated. Otherwise, an unhappy trustee may think it's a 401(k) version of Supermarket Sweep.

Changing TPAs, "don't go into business for yourself"

Changing third-party administrators (TPAs) isn't fun. If you have to for it, do it. However, you need to coordinate with the new TPA with the entire conversion process. TPAs are greater experts at the conversion process than you are, so let them run it.

This isn't the time for you to go into business for yourself and run the process without the new TPA's knowledge and advice.

You hire pros, let the pros run the process.

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