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THE ROSENBAUM LAW FIRM P.C.

ADVISORS ADVANTAGE
A Publication for Retirement Plan Professionals

The Bottom Line For Retirement Plan Providers.

More plan assets for your clients is a good thing for many reasons.

When I had the idea of starting a National ERISA practice 10 years ago, I knew I would have a tough time in getting clients especially when the law firm I was at had partners that weren't interested in selling my services to their clients. So I figured an easy way to market myself and network with other providers around the country is to provide content. You help a plan provider with articles that they can help themselves or market their services; they're going to remember you when they have retirement plan clients that need an ERISA attorney. I also had and still have an open door policy for providers to just give me a call without a bill due. It's straight talk and this article is also straight talk about some of the challenges of being a retirement plan provider.

To read the article, please click here.

Don't give employees the wrong idea.

It's just a terrible idea, trust me.

I always say that the reason I've never hired an employee is because I was an employee once too. I say that the problem with the employee-employer relationship is that no employee thinks they get paid too much and no employer thinks they pay their employees too little.

The worst time of the year for me was the annual review because I always ended up being unhappy with my raise. The problem really was only at one job I had because when it came time to getting promoted, I never got the salary that I thought should come with that promotion. So every year, I felt I needed to chase that salary with a raise. One year, my employer said that if I wasn't happy, I should leave and find another job. I packed up my stuff and was ready to walk off, but a fellow employee

knocked some sense into me that I was married and had an infant son. A year and a half later, I was gone.

When you have great employees, one of the worst mistakes you can make is making them feel unappreciated. Another big mistake is making it clear to them that can go elsewhere. Maybe they didn't think about going somewhere else, but telling they can may provide the spark that gets them to leave. If you truly value your employees, don't give them the idea that the grass maybe greener on the other side.

Advisors need to offer education.

It's good for participants, it's good for business.

Advisors ask me all the time of the role of education in participant directed 401(k) plans and it's an important question. Participant directed 401(k) plans that are governed under ERISA §404(c) offer the plan sponsors liability protection based on a participant's gains or losses on their account when they direct their own investment.

There have been so many misconceptions that plan sponsors and advisors have had concerning ERISA §404(c) plans. They had this belief that if they just give a mutual fund lineup and some Morningstar profiles to plan participants that they are exempt from liability. ERISA §404(c) protection is about following a process and Morningstar profiles is just not enough education to give to plan participants. On the flipside, education to participants doesn't have to amount to an MBA education.

I think an effective education component to ERISA §404(c) plans should include enrollment meetings where the characteristics of the plan are discussed, as well as the investment options, and offering the building blocks of financial education to assist participants to get a better understanding on how to choose investments.

Advisors that may have issues in offering education should always consider using some of the online resources out there such as rj20.com, who could offer investment advice that an advisor can't if they won't comply with the investment advice regulations.

In addition, written materials such as plan highlights and some Morningstar profiles should always be distributed.

Also while many advisors dislike, one on one meetings to participants should always be offered. While most participants will probably shun such meetings, they should always be offered to those that want them because as we know, every participant has a different financial goal and need. One on one meetings offer participant individualized attention on asset allocation and fund choices; it can be an effective means of educating plan participants more than what a general enrollment meeting can offer. It can help participants understand how retirement plan assets relate to their other assets as part of a comprehensive financial plan.

Advisors should always look at education as liability protection, because offering participant education help a plan sponsor minimize their liability under ERISA §404(c).

While I always stress education as important part of the fiduciary process, it's not about achieving a specific result from participants directing their own investments. Offering participants educations is like the old proverb, "You can lead a horse to water, but you can't make him drink."

So no matter how great the education component is, there is no guarantee that it will help plan participants achieve a better financial result because like they say, there is no guarantee in life, except maybe death and taxes. The participant who put all his money into a mid-cap fund because he considers it the "average of the market" may still do so even after getting an education at the enrollment meeting and through one on one meeting. As with most things with retirement plans, it's about following a process and not guaranteeing a result.

Grow your client's plan assets.

It's beneficial in more than one way.

If you're a financial advisor, more assets under management equal more money. It's pretty simple to me. So that means a financial advisor working in the 401(k) plan space should do their best to making sure that their Plans get bigger n the asset department.

That's why being concerned how much the fees that plan sponsors are paying for administration and investments are a concern. More money lost in high fees means less in the Plan. Financial advisors should look to other avenues to grow the assets of the Plan.

If rank and file employees are close to age 70 ½, perhaps approaching them to roll over their IRAs to the 401(k) plan to avoid getting caught up with required minimum distributions is a consideration.

Getting highly compensated employees to transfer ADP refunds into a Roth IRA within the 401(k) plan is an idea, so are the sidecar IRAs that plans could offer for participants who may want IRA and 401(k) assets under the same roof.

Automatic enrollment is another option. Safe harbor plan design and cross-tested allocations can work as well to get more assets.

An advisor who helps the plan sponsor grow assets can help them lower fees and end up getting more shekels for the advisor. That's a good deal.

This is where an advisory firm gets in trouble.

It was a bad idea.

A good chunk of my work as an ERISA attorney is working with financial advisory firms in managing their retirement plan practice especially with 401(k) plans. I have many registered investment advisory clients around the country and I counsel them all areas of their practice. I always caution about share classes in mutual funds offered to plan participants and the need to find the lowest costing share class possible.

So here is an example of advisory firm getting the attention of the government. The SEC issued a cease-and-desist order against Envoy Advisory Inc. Envoy agreed to pay disgorgement for failing to offer the lowest-fee mutual fund share classes available and failing to adequately disclose compensation paid to its affiliated broker-dealer.

The RIA recommended third-party mutual funds to 403(b) and IRA clients, who directed the investments.

According to the SEC, from January 2013 through March 2017, Envoy recommended, and plan participants and IRA holders held, Class A mutual fund shares when less expensive institutional share classes of the same mutual funds were available. Class A shares usually include 12b-1 fees. In this case, the 12b-1 fees paid by mutual funds held by plan participants and IRA holders went to Envoy's affiliated broker-dealer, Envoy Securities LLC, which is a huge problem and conflict of interest.

Envoy's Form ADV disclosures to plan sponsors during the relevant period disclosed that certain mutual funds "may" pay a "dealer" 12b-1 fees, but they failed to disclose that the "dealer" receiving the 12b- 1 fees was Envoy's affiliate.

Thanks to the Tibble case, there is more pressure to find the lowest cost available share class and this Envoy case is a text book case for what advisory firms should not do.

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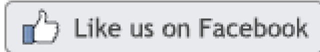

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The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
516-594-1557
Fax 516-368-3780

ary@therosenbaumlawfirm.com
www.therosenbaumlawfirm.com
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