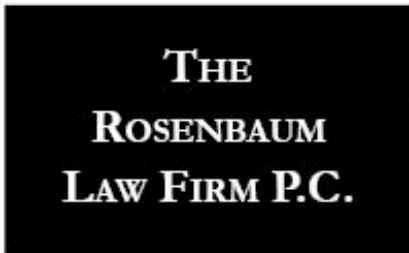


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THE LAW FIRM REVIEW
A Publication for Plan Sponsors and Retirement Plan
Professionals

The Problems With Free and Small Retirement Plans

There is no such thing as a free lunch. There is no such thing as free advice. The more years I spend in the retirement plan business; I know that there is no such thing as a free retirement plan. When I speak of “free” retirement plans, I’m not talking about those 401(k) plans that large insurance company providers swore was free before fee disclosure regulation made that “free” plan costly. I’m talking about those retirement plans that are geared for small businesses like a SEP-IRA or a SIMPLE-IRA. While these plans are great options for small businesses, there is a cost for them even though they are “free”. This article is about the costs and caveats for these small business retirement plans.



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

A Plan Sponsor Should Seek Out A Retirement Plan “Dentist”

More than a dozen years ago, there was a medical report that dental plaque could cause heart disease. I thought it was some sort of dental conspiracy to increase revenue as



fluoridated water and other dental hygiene products have had to have a negative effect on the dentists' bottom line. Regardless of my cynicism, good oral health is important because many health problems are actually derived from poor oral hygiene. While some people only see a dentist when something in their mouth hurts them, many visit the dentist for annual or semi-annual checkups as preventative care, to avoid dental problems later. Brushing, flossing, and checkups help avoid root canals, caps, and dentures. As an

ERISA attorney, sometimes I see myself as a retirement plan dentist. While some plan sponsors only seek counsel from an ERISA attorney when something terribly goes wrong with their retirement plan, there are many plan sponsors these days that seek ERISA counsel as a form of preventative care for their retirement plans. Seeking counsel from an ERISA attorney can be like seeking a dentist in avoiding greater harm. So this article is why retirement plan sponsors should see the help of a Retirement Plan Dentist before having a retirement plan root canal.

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

The Perilous Move From One 401(k) TPA To Another

I hate moving. I hate the dread of packing. I haven't even decided to move from our home for our next residence and I'm already dreading the inevitable move. Transitioning from one third-party administrator (TPA) to another can be as traumatic a move as going from home to another. There are a lot of points to consider to avoid the headaches that can develop if you miss those points.



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

Get rid of the bad business decision makers



I was a Vice President of a synagogue once and the biggest problem I had is that the people who had a greater say than I did were the same people who turned a synagogue from 750 member families to 300. They were ineffective and they didn't understand how incompetent they were.

If your company's retirement plan got into some trouble because the powers that be who run the plan (whether it's the C.E.O., human resources director, or retirement plan committee) took their eye off the plan, it may be a time to replace them especially if they haven't learned from their mistakes.

They often say that people can't change, but I believe that people can change if they learn from their mistakes. If their arrogance doesn't let them learn from their mistakes, then they will never change and they will consistently make the wrong choices. Sounds like most of my family.

When I was at my old law firm, the 401(k) plan was poorly run there. The Human Resources Director who was the trustee didn't bother to hire a financial advisor, she provided no investment education to participants, and plan investments weren't updated for 10 years. In addition, she had no idea the third-party administrator (TPA) received revenue-sharing payments. Based on my advice, they hired a financial advisor. It wasn't the one I recommended, but at least they hired one. The Human Resources Director eventually without my input, hired a new TPA. Many years later after I left, someone told me that the plan owed a lot of money in corrective contributions that made no sense to me, but it was the same Human Resources Director in charge. Pat always thought she knew best and she didn't.

A retirement plan that had major compliance issues will have them again if the powers that be that didn't learn from their ways will make consistent poor plan provider selections like pat. It's my opinion is that these powers that keep on making bad choices should step aside and let the people who can make the right choices take their spots. It's hard for people with large egos to do such a thing because their egos won't let them understand that what they have been doing all along is wrong.

You can still lose by winning

The news comes trickling in for 401(k) plan providers and plan sponsors beating back class action lawsuits.

Many plan providers win their case as defendants because the plan participants fail to convince a judge that the provider serves in a fiduciary capacity. Plan sponsors often win, just because the plan participants showed that a certain decision like using revenue sharing funds was a clear breach of the sponsor's fiduciary duty.

While plan providers and plan sponsors win their case, they have still lost. The news about them winning is far less public than the news about them getting sued in the first place. In addition, the cost of litigation is burdensome even if the providers and sponsors have fiduciary liability insurance.



There is no champagne celebration for winning a case on summary judgment because of the huge cost in publicity, time, and cost. Even if the plan provider and plan sponsor did nothing wrong, something they did suggest that there was impropriety that an ERISA litigator was good enough in order to commence litigation. So if a plan provider and plan sponsor have won their case, they've really won a hollow victory.

ERISA attorneys and the snowball effect



The snowball effect is a term for a process that starts from something that is small and builds upon itself, becoming larger and also perhaps potentially dangerous or disastrous. The idea is that an avalanche can be started by a single, rolling snowball, hence the term.

When it comes to retirement plans, we have a snowball effect. The effect is usually when the plan sponsor has a plan problem and decides to either try to fix it on their own or lean on legal counsel with absolutely no training in ERISA.

I have seen too many plan sponsors pay tons of penalties and excise tax to correct problems that could have cost them a lot less if they were represented by ERISA counsel.

I remember being contacted a few years ago by a financial advisor whose client's plan was disqualified by the Internal Revenue Service and was asked if I could possibly represent them in negotiating down any other Internal Revenue Service penalties. I told the advisor I should have been called a lot earlier because the transgression shouldn't have led to the plan being disqualified if they had some decent ERISA counsel. Too many plan sponsors think they can handle an audit or inquiry or investigation on their own and they're wrong unless they are a third-party administrator or ERISA counsel.

In the past, I have been able to negotiate penalties down for failures to file Form 5500 on time when plan sponsors not represented by counsel have paid through the nose in penalties. Too often plan sponsors are so more interested in saving on legal fees, that they end up cutting their nose to spite their face by paying more in penalties.

ERISA counsel has the experience to handle the government and I have found deference by IRS and DOL auditors in dealing with professionals who understand the ramifications of the situation, which often leads to a better resolution.

Using counsel who has no ERISA experience is a mistake as well, like hiring a dentist to do a colonoscopy. ERISA is a different animal than what most attorneys handle and I have found there is no room for lawyers who want to dabble in ERISA because it's not something you can dabble in.

Once a plan sponsor gets that initial inquiry, they need to contact ERISA counsel and their TPA to draft an action plan on how to handle it because often the IRS and the DOL may use an audit to investigate a major complaint. Having a lack of experience in handling a governmental audit can make things so much worse.

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**The Rosenbaum Law Firm P.C | 516-594-1557 |
734 Franklin Avenue, Suite 302, Garden City, NY 11530 | therosenbaumlawfirm.com**

