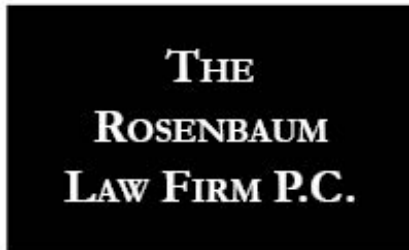


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THE LAW FIRM REVIEW
A Publication for Plan Sponsors and Retirement Plan
Professionals

Solving The Mystery Of What A TPA Does

When people ask my wife what I do for a living, she says she doesn't know. Half the time I think she's joking and half the time I think she's serious that she doesn't know what an ERISA attorney does. The same thing goes with third-party administration (TPA) firms, who serve as the backbone of the qualified plan industry because of the nature of their role. Whether it's through poor marketing or a lack of understanding by plan sponsors, many people don't know what a TPA does. So this article is written to solve some of the mysteries of TPAs and for you to understand their role and why it's so important to have one that will do a quality job.



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

The 401(k) Problems With Former Employees



I always say that the real reason I never hired employees for my law firm is that I was once an employee too. That means that no matter what my employer could do, there would probably be something I still would complain about. One of the lurking dangers in your 401(k) plan is former employees who still have account balances in your plan and my suggestion to you that as a 401(k) plan sponsor, you should minimize your liability exposure by trying to get these former participants to roll out their account balance and cash them out if they are under the cash-out provision.

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

The To-Do List For 401(k) Plans Now: 2020-2021 Edition

Being a retirement plan sponsor is a tremendous responsibility and the problem is that most plan sponsors don't understand that. Plan sponsors often act passively because they hire retirement plan providers to help them. The problem is that fiduciary responsibility doesn't allow plan sponsors the luxury to be passive when the buck stops with them. So that means you need to be active and understand what's going in the retirement plan industry that can impact your plan. With changes in how retirement plans are run and constant concerns with rampant 401(k) litigation, there is a list for you to do now.



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

The Bonus Problem



When I first started as an ERISA attorney, I worked for a kind man named Harvey Berman in 1998, working for his law firm affiliated with his third-party administration firm. During Christmas time, he gave me a \$300. That was the first and last bonus I ever received.

I know people do get bonuses, my wife is an attorney and she gets it. The problem with bonuses is the treatment under 401(k) plans. While many plans exclude

bonuses from the definition of compensation, many do not, and that means the bonus paycheck is subject to

the deferral election made by the plan participant (unless the plan has a separate bonus election in their plan document).

Not letting participants defer their bonus when the plan document allows them to, creates what we call a missed deferral opportunity, which might require corrective contributions on your part as plan sponsors. To eliminate the potential headache, make sure participants can defer or exclude bonuses from the definition of compensation. As someone who fixes plan problems for a living, I just need you to understand that the best way to avoid a problem is avoiding the problem.

Plan Terminations will cause leakage

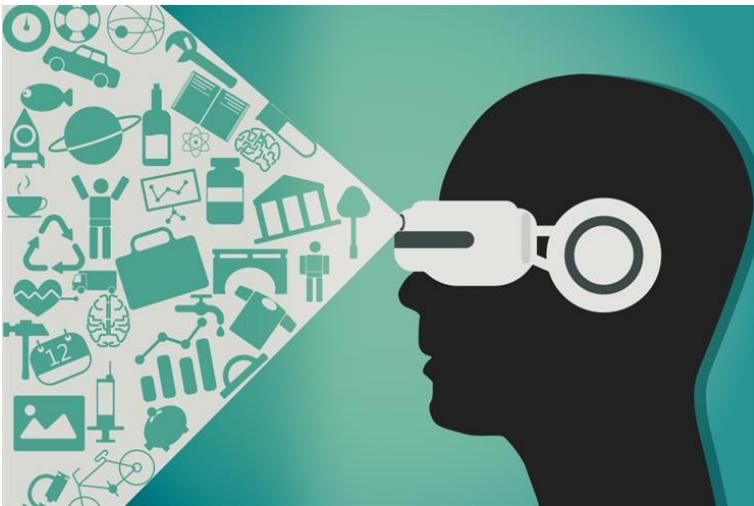
If you look at the stock market, you wouldn't know unemployment is 10% and that 180,000 Americans died.

Small and medium-sized businesses have born the brunt of the closings mandate by state governments around the country, while the Wal Marts, Home Depots, and Targets have remained open.

The problem with business closings is that we are starting to see the temporary closings become permanent for many businesses. The problem with the 401(k) plan terminations of these shuttered businesses is that it will incite distributions to terminated participants who need the money now and will not roll over to an IRA. The problem is that by cashing or retirement benefits now, it will only exacerbate the retirement crisis in this country.



Experience could mean many things



I always talk about how plan sponsors need to work with experienced financial advisors, third party administration (TPA) firms, and ERISA attorneys on their plan needs.

Like with reasonable fees, I believe that the term "experienced" is vague. Experience doesn't just mean years of service as a service provider. Years of experience are just one measure of retirement plan experience. Retirement plan experience could be a number of plans that a provider is currently

working on or even something as performing good practices in an industry where not many providers do that. So I was kind of taken back when a financial advisor I assumed that I said experience means years because this advisor (who has made a name for himself as being excellent) protested that he had 3 ½ years experience and his commitment to his clients in doing the right thing was better than what many with 35 years experience as a financial advisor who put their needs ahead of the client. I told him that he was preaching to the choir because I've been there and done that.

I worked at a law firm for 2 ½ years. You had some law firm partners who were excellent and then you had some that you knew that either fell through the cracks or more likely, were “juiced in” because a senior partner took their fancy. At one point, our firm had about 5 ERISA partners. All of these partners were from the multiemployer world (union Taft Hartley plans), which is a different creature from the single employer world. I bet none of these attorneys knew what revenue sharing was or how a single employer 401(k) plan because one of these partners was our 401(k) plan’s trustee and he never bothered to hire a financial advisor or review investments with the other two trustees or have participants in the plan get investment education that only increased the law firm’s fiduciary liability as a plan sponsor. So if you sponsor a 401(k) plan, would you hire one of these ERISA attorneys? At another firm, I once worked for one of the best ERISA attorneys in the country (in the multiemployer world) and didn’t know what revenue sharing was and why plan sponsors need to be concerned about administrative costs.

The same can be said of financial advisors. A financial advisor may have a billion dollars or management or have been in the business for 30+ years, but it’s irrelevant if they don’t have more than one retirement plan on their books. Even if they have a load of retirement plans on their books, it doesn’t mean anything if they don’t help their clients with an investment policy statement or giving education to participants in participant-directed 401(k) plans.

Same with TPAs. Some can’t handle daily valued 401(k) plans, some can’t handle defined benefit plans, and some can’t handle any retirement plan outside of the box like new comparability form of allocation. The point is that levels of experience may vary and it’s important to find the retirement plan provider with the right experience. It has to be the right fit for the plan based on the plan’s size and type. How do you? Nothing beats word of mouth and asking the potential retirement plan provider the right questions, especially if they have the experience to handle your type of plan.

Check out That 401(k) Podcast

Check out That 401(k) Podcast and my YouTube Channel.

The podcast you should listen to if you have the time, as well as YouTube videos.

Please check out That 401(k) Podcast. We tackle important 401(k) subjects for both plan sponsors and plan providers. In addition, we talk about all the events I’m hosting, as well as important cultural allusions.

Find it [here](#) and on Apple Podcasts [here](#).

To catch the podcast and our virtual events, find my YouTube channel [here](#).



Volume 11 Issue 11, November 2020

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