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THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

You Have To Deal With Some Unpleasant Facts About Your 401(k) Plan.

The greatest benefit you can provide as an employer is a qualified retirement plan, such as a 401(k) plan. The problem is that most employers treat a 401(k) plan with as much care as they do with other benefits such as free milk and coffee. The problem is that while sponsoring a 401(k) plan is a great idea, there are some unpleasant facts that go along with it. Unlike Elaine in the movie, Airplane!, you will have to face them as a 401(k) plan sponsor.

To read the article, please click **here**.

Hiring A 401(k) Plan Provider? Avoid These Mistakes

Many years ago when I was a young ERISA attorney working for a third-party administration (TPA) firm, I left to take a job as an attorney for a union-side law firm. That was a mistake because I joined the union-side law firm just to get away from the job at the TPA. Every decision you make for just the right reasons and as a 401(k) plan sponsor, changing TPAs must be for the right reasons, and often, plan sponsors make a change for the wrong reasons. This article is all about the pitfalls in selecting a new plan provider.

To read the article, please click **here**.

Mid-2021 401(k) Update For Plan Sponsors

Being a 401(k) plan sponsor is a little different than other employee benefits that you provide. There is very little you have to do with the Keurig machine or the discount gym membership. Being a retirement plan sponsor means being a plan fiduciary, which requires you to provide the highest duty of care in dealing with the retirement assets of your employees. One of the problems with being a fiduciary is that the law and regulations concerning 401(k) plans constantly change and you need to be aware of it. So without further ado, here are some of the important issues impacting 401(k) plans in Mid-Year 2021.

To read the article, click **here**.

Fiduciary liability insurance is worth it

The warranty in the electronics business is gravy for the retailers who sell it. You'll be surprised how many people pay $20 to get a warranty on a $100 Blu-Ray player. When Best Buy was going national, they advertised how they wouldn't sell warranties and then realized that they couldn't turn down all that free money.
A warranty is like insurance, so you should only insure those things that have a high-cost replacement. You insure your health, your life, your house, your car, and some appliances worth insuring.

This isn't another diatribe about the fiduciary warranty that insurance companies used to give away for free even though their main business is insuring risk for a fee.

This about plan sponsors who don't insure their risk by buying fiduciary liability insurance or buying a plan service that could review their plan expenses and/or their plan document/administration.

Fiduciary liability insurance helps protect plan sponsors who find themselves also appearing as defendants in a plan lawsuit filed by an aggrieved plan participant in a town near you. I had clients sued in a class-action lawsuit where the insurance company paid $900,000 for a $1 million legal fee (there was a $100,000 deductible) and this plan sponsor won their case.

So many plan sponsors don't want to pay for a plan review that can help them identify plan issues they wouldn't ordinarily find unless they were converting to a new provider. I have a plan review called the Retirement Plan Tune-Up for $750 and I can probably count on one hand how many I do a year. When I talk to plan sponsors and advisors, they seem interested but they treat a plan review like a trip to the dentist; something that they will avoid until it's too late.

Spending some shekels on a fiduciary liability policy and a plan review is certainly well worth it to avoid greater harm later.

Pay on that bonus

Bonuses are something I don't know much about since the only bonus I got was $300 three months after I started as an ERISA attorney. What I do know about bonuses is my role as an ERISA attorney and I have to say from experience that it is necessary to be included in the definition of compensation because otherwise, it invites error.

A small cottage industry of my practice is submitting plans to the Internal Revenue Service as part of the voluntary compliance program and a huge part of that, deals with plans excluding bonuses from the definition of compensation for the purposes of salary deferrals and employer contributions, even though the plan document says otherwise or vice versa where the include it, but the plan definition excludes it.

I come from the belief that you should "keep it simple, stupid." That is why I think you should just offer deferrals and employer contributions on bonuses, just my two cents.

Hire an advisor when you get an employee

I'm still amazed when I find participant-directed 401(k) plans without a financial advisor. While I understand how solo 401(k) plans don't have an advisor because individuals think they can do it on their own, it makes no sense when you have an employee. I have a solo 401(k) and I handle my investments. I always say that the moment that I add an employee, I am going to hire a financial advisor and there is an easy reason why.

I am often amazed that in the age of the internet that there are still travel agents around in business because the internet has allowed us to book trips and hotel rooms with a simple click button. In the old days, unless you had the travel agent software, you couldn't do it on their own. Thanks to the internet, we can invest on our own, and buying and selling securities can be done with the click of a mouse as well. While many people think that the usefulness of a financial advisor has gone the way of a travel agent, I respectfully disagree.

When it comes to participant-directed 401(k) plans, the main role of a financial advisor in my opinion isn't picking mutual funds as a broad range of investments. While I love financial advisors, I believe that with all due respect to Commander Montgomery Scott from Star Trek III, that a monkey and two trainees can pick a mutual fund lineup.

I think the value of financial advisors is having them a part of the fiduciary process, drafting an investment policy statement, reviewing the current fund lineup, and most of all, employee education.
I worked at a semi-prestigious (sorry, Lois) law firm on Long Island and there was no financial advisor on the 401(k) plan for a review of the mutual funds for 10 years. I knew we needed one when someone on the office staff stated that he only invested in the mid-cap mutual funds because "it represented the middle of the market." That is why you have s financial advisor.

Even 401(k) plans that offer index funds or exchange-traded funds need a financial advisor because while index investing beats most of the active funds consistently, participants still need investment education to make an informed decision that will get the plan sponsor ERISA §404(c) protection. Index funds and ETFs are great, but what about cost, asset allocation, and risk tolerance? Index funds and ETFs won't solve those issues on their own. So even a plan offering only a passive approach needs a financial advisor.

The moment I hire an employee will force me to hire a financial advisor for my plan because, despite my knowledge of 401(k) plans and investments, I don't have the background or training to review funds and offer education. I stick to what I know, so I stay out of trouble.

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