RETIREMENT INSIGHTS

A RESOURCE FOR PLAN SPONSORS AND ADMINISTRATORS

Sweet Dreams

Reduce Litigation Risk and Sleep Well at Night With These Three Fiduciary Best Practices

As a plan sponsor, you've likely noticed how industry media consistently reports on stories of retirement plan committees being sued for breaching their fiduciary duties. While most of the initial wave of lawsuits concerned defined-contribution plans at for-profit companies, the latest litigation trend is targeting not-for-profit companies as well as colleges and universities.[1]

Whether it's selecting an appropriate fund share class, properly diversifying asset classes among different fund families, implementing socially-responsible investment options or a host of other issues, plan sponsors have clear fiduciary responsibilities under ERISA. They must commit to act prudently and solely in the interest of plan participants and beneficiaries. Plan sponsors may be held liable for breaches of fiduciary duty, including losses to the plan resulting from imprudent investments or other actions. Remedies for breach of fiduciary duty may include restoring losses to the plan, paying legal fees and other costs, and being removed as a plan fiduciary.

While the majority of lawsuits have targeted larger employer plans,[1] the lessons that can be learned apply to businesses and plans of all sizes. Here are three best practices that plan committees should be taking to reduce their risk...and sleep well at night.

[1] "3 Best Practices For Avoiding a Fiduciary Breach" (Investment News, 5/26/2023).

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- Establish and follow a prudent process for selecting, monitoring, and replacing investment options under the plan. This may involve hiring an independent investment advisor, conducting regular reviews of investment performance and fees, documenting the rationale for decisions, and adhering to the plan's investment policy statement.
- Ensure that plan fees are reasonable for the services provided and that participants are adequately informed of the fees and expenses associated with their investments. The key word here is "reasonable," not "lowest." This may involve benchmarking fees against industry standards, negotiating lower fees with service providers, disclosing fee information in compliance with ERISA regulations, and avoiding conflicts of interest or prohibited transactions.
- Educate and communicate with plan participants about their rights and responsibilities under the plan, the investment options available, the risks and rewards of investing, and the importance of saving for retirement. This may involve providing enrollment materials, investment education, financial wellness programs, periodic statements, and access to online tools and resources.

These are some examples of best practices that may help plan sponsors fulfill their fiduciary duties and protect themselves from potential lawsuits. However, each plan is unique and may require different strategies depending on its size, design, goals, and participant demographics.

Your HUB plan advisor is always available to review your fiduciary duties with you, develop a strategy to fulfill them and provide guidance and assistance on ERISA compliance and fiduciary governance.

Additional sources:

"401(k) Plan Sponsor Fiduciary Responsibilities" (Finance Strategists, 4/11/2023

"Meeting Your Fiduciary Responsibilities" (irs.gov)

Online Resources

Internal Revenue Service (IRS), Employee Plans
www.irs.gov/ep

U.S. Department of Labor,
Employee Benefits Security Administration
www.dol.gov/ebsa

401(k) Help Center
www.401khelpcenter.com

PLANSPONSOR Magazine
www.plansponsor.com

BenefitsLink
www.benefitslink.com

Plan Sponsor Council of America
www.psca.org

Employee Benefit Research Institute
www.ebri.org

State of Emergency

Plan Sponsors May Offer Emergency Savings Accounts to Employees Starting Next Year

Emergency savings accounts within retirement plans are a relatively new concept that has not been widely studied yet. Recent research underscores the current emergency savings challenge and shines a light on the potential benefits of these accounts.

Digging Into the Data

According to a report by Bankrate,[2] 30% of Americans made building an emergency savings account their top financial goal of 2023. The report also found that nearly half (49%) have less savings (39%) or no savings (10%) compared to a year ago, due to continuing economic impacts of inflation and other circumstances. The report also found that only 43% of U.S. adults would pay for an unexpected emergency expense from their savings, while 25% would accrue credit card debt and pay it off over time — a record percentage since polling started in 2014.

Recent research from the BlackRock Emergency Savings Institute and the Defined Contribution Institutional Investment Association Retirement Research Center highlights a positive connection between having emergency savings and retirement planning. The study found that if an individual were to have a rainy-day fund available during emergencies, it's unlikely they would tap their retirement savings. In fact, they were 70% likelier to contribute to a defined contribution (DC) retirement plan.[3] Another study from Commonwealth and SaverLife found that close to a third of individuals said they would either start contributing or contribute more to a workplace retirement account if it was paired with an emergency savings option.[3]

New Optional Solutions Available in 2024

Beginning in 2024, SECURE 2.0 provides employers with two ways[4] to allow participants access to funds in case of an emergency. First, employers may offer participants an emergency savings withdrawal of up to $1,000 per year. This withdrawal is not subject to an early withdrawal penalty and may be repaid over three years (although not required). Second, employers may offer participants with lower wages an emergency savings account as part of their retirement plan.

Employees may voluntarily contribute or may be automatically enrolled at up to 3% of their annual pay (capped at $2,500). The contributions are made after tax and must be invested in a low-risk product that preserves principal. The employees can withdraw up to the full account balance at least once per month, with the first four withdrawals in the plan year being free. The contributions also count for the purposes of any employer match in the plan, but the matching dollars must be directed to the retirement account within the plan, not the savings account.

Plan sponsors should work closely with their plan advisor, recordkeeper and payroll provider to evaluate all potential emergency savings solutions. For example, studying the history of hardship withdrawals in the plan and usage of funds can help provide insight on an appropriate solution. In addition, basic financial wellness education addressing budgeting and debt management should continue to be emphasized.

[1] Bankrate's 2023 Annual Emergency Savings Report; https://tinyurl.com/59z9z298.

[2] "Emergency Savings and Retirement Planning Tightly Linked" (401(k) Specialist Magazine, June 9, 2023);

[3] "SECURE 2.0 Series Part 5: A Little More SECURE-ity – Emergency Savings in Your 401(k)" (The National Law Review, January 23, 2023).

Asked & Answered

Q: ***We are looking forward to seeing the U.S. Department of Labor's (DOL's) efforts to help both savers and plan sponsors locate missing and forgotten 401(k) accounts by creating a national search database. Are there any statistics that shed light on the magnitude of this problem in the retirement plans industry?***

A: Many job switchers leave their 401(k) behind to deal with later. The result is that they can end up with a string of 401(k) accounts tied to former employers, each with different fees, asset allocations, and custodians. In an updated version of its 2021 whitepaper, "The True Cost of Forgotten 401(k) Accounts," Capitalize found forgotten accounts have grown by 20% in the last two years. As of May 2023, there are an estimated 29.2 million forgotten or left-behind 401(k) accounts in the United States, representing $1.65 trillion in assets. Capitalize research attributes the growth to last year's "Great Resignation" push and raised rates of job switching. The average account balance of a forgotten 401(k) increased to $56,616 from $55,400, and in aggregate, the assets left behind by job changers now represent close to 25% of the total savings in 401(k) plans. If you are considering embarking on a search yourself, here are five tips for plan sponsors to better document their missing participant search efforts.

Q: ***Our committee is working with our plan advisor to create and implement a pre-retiree education campaign early next year. Are there any recent statistics regarding workers delaying their retirement and their reasons for doing so?***

A: Investors struggling with ongoing inflation, high interest rates and an unstable economic environment are considering delaying their retirement plans, according to Nationwide's eighth annual Advisor Authority survey. The survey by the Nationwide Retirement Institute finds that 25% of pre-retirees — defined as nonretired investors aged 55–65 — are planning to retire later than expected and another 15% are unsure if they will ever retire. Although a number of factors are contributing to their decision to delay retirement, the majority (60%) said inflation poses the greatest immediate challenge to their retirement portfolio over the next 12 months. An economic recession (46%), market volatility (36%) and taxes (23%)
are also factors in their decision.

Q: ***We are considering outsourcing some of our ERISA 3(16) administrative fiduciary responsibilities. What are some things to keep in mind?***

A: Many plan sponsors already outsource administrative duties to their recordkeeper (such as hardship approvals and preparation of 5500 forms) in a nonfiduciary capacity. Some are now looking to outsource not only the work, but also the fiduciary discretion or control, to minimize workloads and/or reduce ERISA liability. Given the scope of responsibilities, a provider's technological capabilities and knowledge, skill and experience with plan administration is very important. Connectivity to the recordkeeper (when the 3(16) fiduciary is unrelated) also matters to ensure a quality service experience for plan participants. To further explore governance models that delegate some level of fiduciary responsibility to external providers, check out "Defined Contribution Plan Governance Models: A Guide for Plan Sponsors," published by the Defined Contribution Institutional Investment Association.

Key IRS Plan Limits for 2023

401(k) Maximum Elective Deferral *(*$30,000 for those age 50 or older, if plan permits)*	**$22,500***
Defined Contribution Maximum Annual Addition	**$66,000**
Highly Compensated Employee Threshold	**$150,000**
Annual Compensation Limit	**$330,000**

Source: irs.gov

PLAN SPONSOR

Quarterly To-Do List

JANUARY

- Send payroll and employee census data to the plan's recordkeeper for plan-year-end testing (calendar-year plans).
- Audit fourth quarter payroll and plan deposit dates to ensure compliance with the DOL's rules regarding timely deposit of participant contributions and loan repayments.
- Verify that employees who became eligible for the plan between October 1 and December 31 received and returned an enrollment form. Follow up on forms that were not returned.

FEBRUARY

- Update the plan's ERISA fidelity bond coverage to reflect the plan's assets as of December 31 (calendar-year plans). Remember that if the plan holds employer stock, bond coverage is higher than for nonstock plans.
- Issue a reminder memo or email to all employees to encourage them to review and update, if necessary, their beneficiary designations for all benefit plans by which they are covered.
- Review and revise the roster of all plan fiduciaries and confirm each individual's responsibilities and duties to the plan in writing. Ensure that each fiduciary understands his or her obligations to the plan.
- Provide quarterly benefit/disclosure statement and statement of plan fees and expenses actually charged to individual plan accounts during prior quarter, within 45 days of the end of the last quarter.

MARCH

- Begin planning for the timely completion and submission of the plan's form 5500 and, if required, a plan audit (calendar-year plans). Consider, if appropriate, the DOL's small plan audit waiver requirements.
- Review all outstanding participant plan loans to determine if there are any delinquent payments. Also, confirm that each loan's repayment period and the amount borrowed comply with legal limits.
- Check bulletin boards and display racks to make sure that posters and other plan materials are conspicuously posted and readily available to employees, and that information is complete and current.

Consult your plan's financial, legal or tax advisor regarding these and other items that may apply to your plan. This is not intended to be an exhaustive Quarterly-to-do-List but meant as an illustrative guide. Please contact your Adviser for additional information.

Informational sources: irs.gov, plansponsor.com, asppa.org and Kmotion Research 2023.

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