THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

Good Bets by a 401(k) Plan Sponsor to Avoid Liability.

As close to a sure thing you'll get.

I don't gamble because I don't like to lose and that's a big problem about gambling because people do lose. I stopped playing Powerball and Mega Millions. The last time I ever bet on a sport was betting a friend $10 on the Riddick Bowe-Michael Dokes fight because putting money on Bowe was as close to a sure thing way back then. When it comes to a 401(k) plan, there are no sure things. However, there are bets that a plan sponsor can place that will have great odds in having the plan be in good shape and away from liability. So this article is about betting that a 401(k) plan will be fine by making good decisions.

For the article, click here.

How Employers Can Avoid Turning Their Retirement Plan Into An HR Disaster.

Small steps to avoid a larger problem.

When it comes to recruiting and retaining employees, salary isn't enough. Employees also seek benefits, which can be treated as tax-free compensation such as employer-provided health insurance and tuition assistance. One important employee benefit that is often used as a recruiting and retaining tool is an employer-sponsored retirement plan. Too often plan sponsors forget that the purpose of setting up a retirement plan is to help an employee achieve tax-deferred savings for retirement. While a retirement plan is an important employee benefit, the flip side is that a poorly run retirement plan can expose the plan sponsor to liability and become a human resources disaster. So this article is about how plan sponsors can avoid having their retirement plans become human relations disasters.

To read the article, please click here.

Never Use Your Payroll Provider As Your 401(k) TPA.

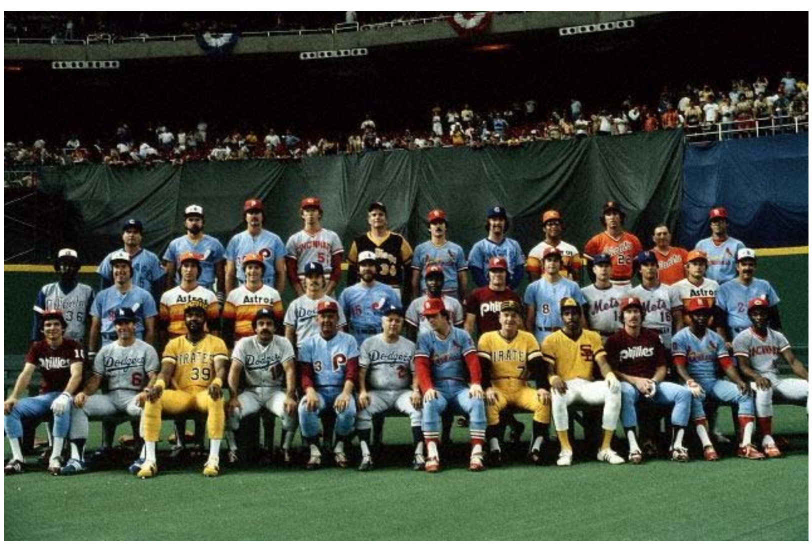
Never a good idea to have your payroll provider be your TPA.

I have been in my own practice for 5 years and for 5 years, I've made enemies with two of the largest payroll providers in this country because I have issues with payroll providers being third party administrators (TPAs) for 401(k) plans. While it may look good on paper to hire a payroll provider as a 401(k) TPA, it's actually a terrible idea, and this article will tell you why.

To read the article, please click here.

Plan Sponsors Need Their Own All-Stars.

They need the best of the best.



The Major League Baseball All Star Game was something I always looked forward, especially when my Mets were doing well in the mid-1980's. Since 1933,it has been the Mid-Summer Classic.

The starters for the All Star Game (except for the pitcher) are selected by the fans through voting. Based on who is playing this year, I think fans picked to many Kansas City Royals.

When I was a kid, there was a lot more popularity involved. My favorite player (until I met him) was Reggie Jackson and there were some years that Reggie's numbers didn't warrant a starting

bid. In addition, the reserves are selected with a rule that each player must have been a representative. So I remember the years when John Stearns or Joel Youngblood were selected to the National League All Stars only because the Mets had to have one All Star.
When plan sponsors select plan providers, they need their own All Star team. Unlike the Major League All Stars, all selections must be based on merit. So picking up a provider just because they have so many plans (I'm looking at you payroll providers) isn't a wise idea and neither is picking up a financial advisor just because he or she has a $1 billion under management. Picking a plan provider because their affiliated bank gave the plan sponsor a credit line isn't a good idea either. Like a major league manager, plan sponsors need to evaluate all plan providers through a process to see who is the best fit for their plan. Just going with a big name isn't a process; it's a recipe for disaster if things don't go right.

The Snowball Effect in not using an ERISA Attorney.

A small snowball turns into an avalanche.

The snowball effect is the 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 have the experience to handle the government and I have found a 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 have 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 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.

Plan Provider Changes Shouldn't Be Just To Make Someone $$$$$.

It should be done for the right reasons.

Everyone has an opinion, but I think the independent opinion that is guided by beliefs and not by pay is far more important than the opinion that is greased by greed.

I had lunch with my local neighborhood third party administrator (TPA) and we were talking about the business of retirement plans.

He told me that a client bolted to a payroll provider TPA (not the big 2, but another smaller one. Yes there are others) to save $600 in administration fees.

The client was told to move to the payroll provider TPA by their accountant because of the $600 savings. What I forgot to mention is that the accountant is the new broker of record for the plan. The accountant is wearing two hats. I own lots of hats (I love fitted Major League Baseball hats), but I only have one hat to get paid.

What the accountant and the new payroll provider TPA failed to mention is that they were each netting over $10,000 for this change. Of course, the client wasn't thrilled when the old TPA told them the "good news".

The lesson here is that if you're a plan sponsor and you get a recommendation by one of your provider to change the advisor, make sure it's for the right reason and not for the recommending provider to get some pecuniary gain. There are many good reasons why plan sponsors should make a plan provider change, a windfall for your financial advisor and new TPA isn't one of them.

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The Rosenbaum Law Firm Review, August 2015, Vol. 6 No. 8

The Rosenbaum Law Firm P.C.

ary@therosenbaumlawfirm.com
www.TheRosenbaumLawFirm.com
734 Franklin Avenue, Suite 302
Garden City, New York 11530
Phone 516-594-1557
Fax 516-368-3780