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THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

## Things That Won't Help A Retirement Plan Sponsor Limit Their Liability.

**Yup, not going to help.**

When I was a teenager, we were told that eating oat bran would lower cholesterol and it didn't. We're told that cracking our knuckles will cause arthritis and it doesn't. We're told that going outside when it's cold with wet hair will get us sick and that's not true. When it comes to retirement plans, plan sponsors think that there are certain services or products will limit their liability and it turns out not to be true. This article is about things out there in the retirement plan world that will not limit the liability of plan sponsors.

For the article, click here.

## Glaring Problems A Plan Sponsor May Not Be Aware Of When They Think Everything is OK.

**It's obvious.**

I knew a family member who would never go to the doctor for preventative care. She always reasoned that if she went to a doctor, that meant she was sick. That meant that her goal was avoiding the doctor at all costs. It's silly that someone would avoid going to the doctor because many illnesses and diseases don't show symptoms for a while. I've known people who died way too early because they didn't seek out medical attention until it was too late. While not on the same level as life or death, plan sponsors act that way about their retirement plan. They only seek guidance and help after the errors have happened because they have a false sense of security about their plan, because their current providers tell them it's OK. So this article is about the many hidden problems that plan sponsors may discover about their plans after the errors have gone untreated for quite some time just because they didn't seek the preventative care a plan review would have taken care of.

To read the article, please click here.

# The To-Do List For 401(k) Plans Now: 2016-2017 Edition.

**What to do.**

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 passive 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. With the new fiduciary rule and constant concerns with rampant 401(k) litigation, there is a list for you to do now.

To read the article, please click here.

# Furnish those documents to Plan Participants or Pay Through The Nose.

**Big mistake in not giving them out.**

Plan sponsors should understand that under ERISA, plan participants are entitled to certain disclosures and documents. We should all know that a participant is entitled to the summary plan description, summary annual report, a fee disclosure if the plan is participant directed, an annual statement of benefit, and some other documents enunciated and codified in law.

A plan participant in Askew v RL Reppert Inc. sued their employer as plan administrator for failing to furnish requested documents as well as failing to provide an audit for the Form 5500 which was required. The plan sponsor was penalized $15,959 for by the Eastern District Federal Court of Pennsylvania. While the penalty of failing to fusion is the documents is $110 a day, the Court had the discretion to penalize $50 a day for failing to provide plan documents and a $1 a day for custodial agreements between the plan and the trust company.

This is isn't some large plan that was sued. This was against a small to medium sized plan who neglected their duties in providing documents and getting a plan audit that was required. If it could happen to a plan like that, I'm sure it can happen to thousands of plans that don't understand their duty to plan participants.

# Forfeitures can be a compliance headache .

**They certainly can be.**

Defined contribution plans such as 401(k) plans have a forfeiture provision if there are contribution in the plan that are not immediately vested. The problem with the forfeiture provision is that they are usually neglected and can be a big headache for compliance.

Plan documents are pretty straightforward on what do do with forfeitures, the first part is dealing with when a forfeiture occurs. It usually happens when in the year when a participant terminates service. Sometimes, you need to wait when a participant completes a 5 year break in service because at that point, you'd never have to reinstate a forfeiture if that former participant returns to employment.

Now that the plan says when a forfeiture occurs know the plan has to specify what to do with them. Some plans will say your reallocate forfeitures to remaining plan participants or you use that amount to reduce contributions. There may also be language that forfeitures are used to reduce employer contributions. Regardless of what the allocation of forfeiture provision is, what is usually forgotten about is that it's a mechanism that has to be done annually. Too many plans fail to make use of their forfeitures according to the terms of their plan, they essentially end up having a forfeiture "war chest" that is big enough to fund a private war. The compliance headache is not following the terms of the Plan which if discovered on an Internal Revenue Service or Department of Labor audit is something that is going to raise concerns.

As a plan sponsor, I suggest taking a look at the forfeiture provisions and understand what needs to happen with them, and that they are operated according to its terms.

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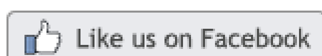


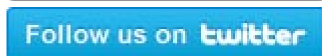

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