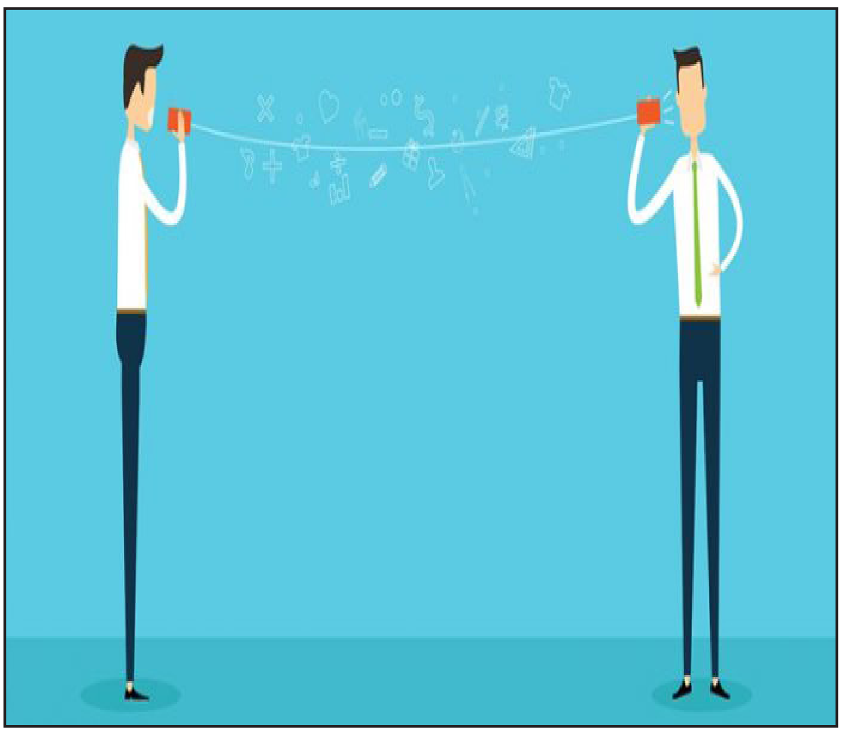
Why 401(k) Plan Sponsors Need To Communicate With Their Participants

By Ary Rosenbaum, Esq.

I will always say that most of the relationships I've had with people that ended badly were the result of a lack of communication. Sometimes, the lack of communication was my fault, sometimes it wasn't. Regardless, it's sad when a lack of communication could destroy a meaningful relationship. One of the most important relationships out there is the employer-employee relationship and I know how that could end badly because I was an employee once too. One of the problems with the employer-employee relationship is a lack of communication, so it isn't surprising to me that most 401(k) plan sponsors never communicate with their employees about the 401(k) plan. It's a problem because I think communication with participants can actually improve the plan, as well as helping the plan sponsor limit their liability as a plan fiduciary.



How am I doin'?

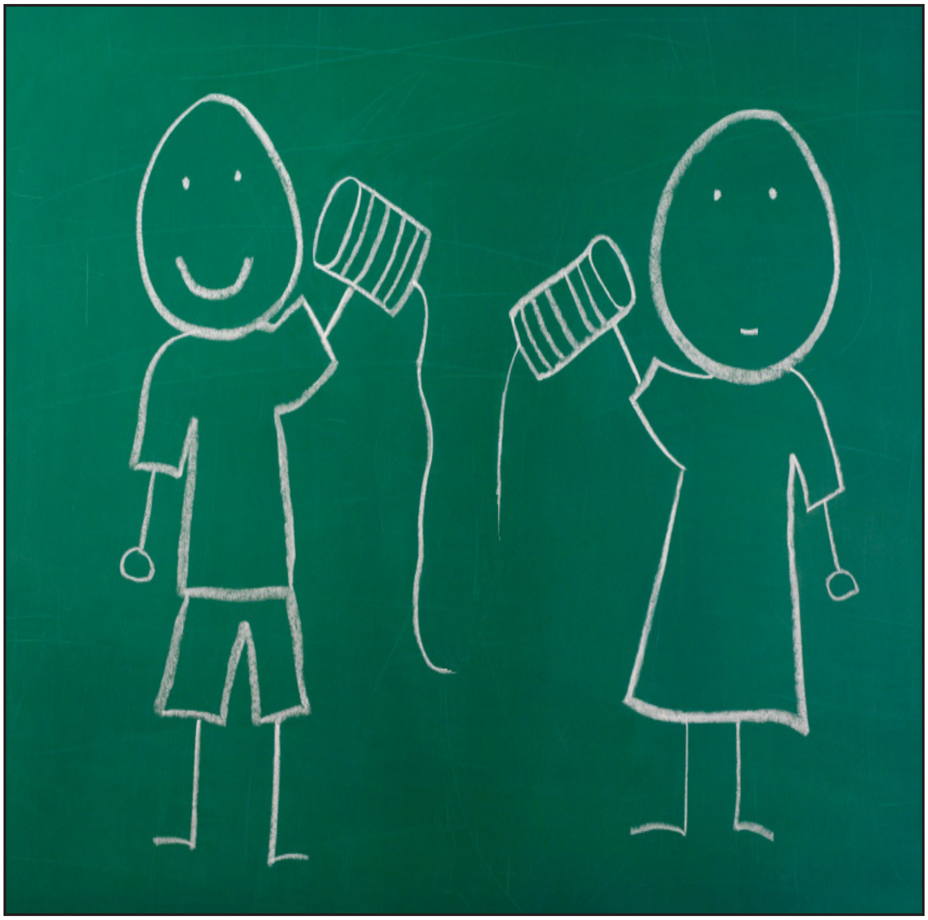
Ed Koch was Mayor of New York City when I lived in Brooklyn when I was a kid and he was famous for asking people and the press: "How am I doin?" As a politician continues success led to re-election so Koch was always trying to gauge how he was doing with the voters. 401(k) plan sponsors never ask how they're doing among their employees, who are also known as plan participants (when eligible to participate). A 401(k) plan sponsor should always know how they're doing both as an employer and as a plan sponsor because keeping happy employees is good for business and they also serve as the fiduciary of the plan. Not to sound like a broken record, but being a plan fiduciary requires the highest duty of care in law and equity. That high level of duty should give you an incentive to talk to your employees to see what they think of the 401(k) plan whether it's positive or negative.

It's an employee benefit

One of the major reasons you set up a 401(k) plan, in the beginning, was because it served as an employee benefit. Along with health insurance, snacks in the break room, and the holiday party, a 401(k) plan is an employee benefit. An employee benefit, in my opinion, is something that should be used to recruit and retain employees. A 401(k) plan that is in disrepair for one reason or another isn't going to do much in recruiting and retaining employees. It's my opinion is that a poorly operated 401(k) plan is a strike for recruiting employees and a reason why current employees may leave especially when another employer has a better 401(k) benefit out there. If you're providing a 401(k) plan, you're providing an employee benefit. What's the point of the benefit if it's not run correctly, whether it's expensive or the enrollment/education process is too complicated? Not everyone can afford to be generous with employer contributions, but the lack of employer contributions isn't what's plaguing most 401(k) plans. What plagues most 401(k) plans is an indifferent plan sponsor that has engaged plan providers who do nothing to entice participants to contribute and save for retirement. This indifference could be high fees, poor communication, lack of investment education, a poor participant website, or something else. Regardless of the issues, you should never lose sight that you put the plan into place because it would serve as an employee benefit, a tool to recruit and retain employees.

Gauging how plan providers are doing

We are often blinded by our viewpoint, which means we only see what we see. Communicating with plan participants isn't just a gauge on how you're doing as a 401(k) plan sponsor, but also a gauge on how your plan providers are doing as well. While you may see the current investment advisor of doing a great job by the quarterly fiduciary investment meetings, you may not be aware that the advisor runs an enrollment/investment education meeting like it's naptime. The same can be said about the third party administrator (TPA), maybe the plan sponsor website is great, but making the participant website is impossible to maneuver. Talking with plan participants could give you a good



idea whether the plan providers you hired are doing a good job or not since a big part of the providers' job is interfacing with plan participants. Providers that aren't keeping plan participants satisfied aren't providers worth keeping because working with participants is really half their job.

Engagement will improve the plan and improve participation

Engaging with participants will give you a good idea of how the plan is doing. If based on the communication, adjustments to the plan are made, you're likely to see increases in plan participation. Plan participants who feel that they are engaged in the process of the 401(k) plan are likelier to participate, even likely to increase their participation the more satisfied they are with the plan. Engaging with plan participants will get them more involved with the entire plan process. If you give participants a say in how the plan is run, I believe you will be rewarded with increased enthusiasm in the plan which will increase the retirement savings accrued in the plan. Plans with increasing size will not only get better pricing, but increased participation and deferrals is a measure on how healthy a 401(k) plan is.

Cutting through the confusion

One of the many reasons that an employee may not defer is because of the confusion dealing with 401(k) plans. The confusion could be the whole enrollment process whether it's the enrollment meeting or the participant website. Another reason you have mass confusion among plan participants is when your plan is inundated with investment options. Most plans might have 12-24 investment options available for participants to direct their own investment, but I've seen plans with 75 and one time, 150 different investment options offered under the plan. While you may think that more investment options allow for more choices, studies have shown that too many investment options depress plan participation because participants are confused with so many investment options that they refuse to participate. Communicating with plan participants about the enrollment and plan education portion of the plan could go a long way in cutting back on participant confusion that leads to depressed participation rates.

Communicating may lead to less liability

For all the reasons I've stated, I believe that communicating with plan participants could go a long way in improving the 401(k) plan. Engaging with plan participants can lead to improved participation, improved administration, better-attended enrolment meetings, and plan education meetings that can provide more information so that participants can make better-informed investment decisions. These plan improvements could certainly go a long way in decreasing your potential liability as a 401(k) plan sponsor especially if the improvements improve day to day administration and keep participants happy because happy participants are less likely to complain or sue than unhappy participants. Most plan sponsors lack empathy because they don't care to ask their employees what they think of the 401(k) plan. If you have some empathy and you engage plan participants, you're going to help limit their liability exposure as a plan sponsor.

Get an honest opinion

I worked for some pretty miserable places as an employee and if they asked for my opinion on the spot, I wouldn't give it because of the fear of retaliation for my honesty. Any communication and engagement you have a participant should be based on trying to get an honest opinion of how the plan is doing. If you put participants on the spot or they fear for their honest opinion, you're just not going to get a reliable gauge of how the plan is. It's my opinion that the only way to get an honest opinion about the plan is through anonymous surveys, which you probably should give out at the regular enrollment/investment education meetings. Anything other than honest opinions about the plan is useless because a bunch of yes people isn't going to help you improve the 401(k) plan especially when it needs it.

The Rosenbaum Law Firm P.C.

The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557

http://www.therosenbaumlawfirm.com
Follow us on Twitter @rosenbaumlaw