# Engage With Your Employees Over Your 401(k) Plan

**By Ary Rosenbaum, Esq.**

Being an employer employing people is tough. I was an employee once and that's why I will try to avoid hiring one. That being said, one of the great benefits that you can offer your employees is a retirement plan. The problem with setting up a 401(k) plan is you just can't set it up, and walk away. A 401(k) plan isn't a living thing, but it's a legal entity that needs constant monitoring and work. This is an article about how you can make this a worthy benefit to engage your employees.

**It's a benefit**

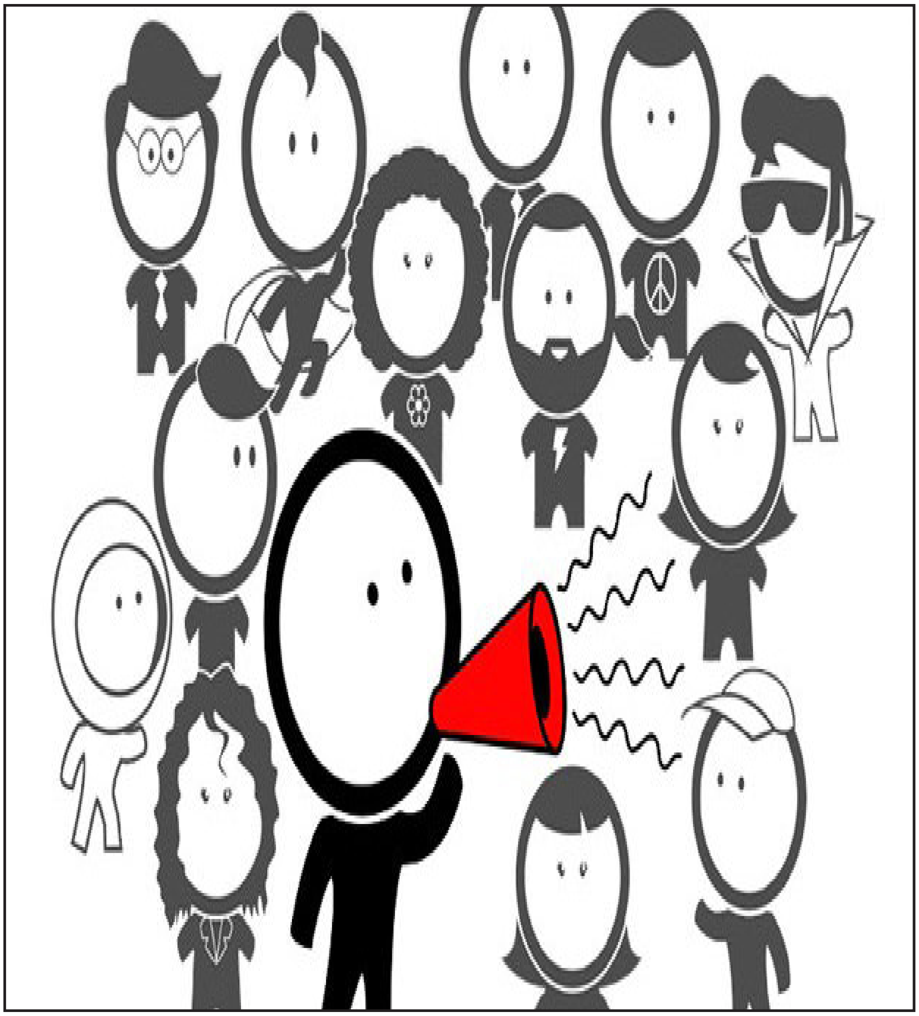
Like I said, I used to work for people and while that was a long time ago, I remember benefits being a big thing. While most employees focus on health insurance and other ancillary benefits, a 401(k) plan is an employer-provided benefit. It's supposed to recruit and retain employees. The problem is most plan sponsors have a set-it-and-forget-it mentality when it comes to their 401(k) plan. The running joke that I had about one former employer is that the only time that employees complained was when the employer stopped providing free milk for the Keurig coffee machine. While most employees don't want to rattle the cage, I assure you that their 401(k) plan is really important to them. Just because they don't speak up (most people don't want to shake the boat), doesn't mean they don't care what happens to the 401(k) plan. A 401(k) plan is a cost-effective benefit (unlike health insurance) and a better 401(k) plan will help you retain and recruit employees. If you're not offering a 401(k) plan for your employees, I still think you should. While smaller plans have fewer compliance issues, employees can save less, and employer contributions require the same percentage amount for all employees. 401(k) plans allow your employees to save more and allow for different levels of employer contributions for you and your highly compensated employees. Even if you don't offer a retirement plan, many states are requiring employers like you to offer a retirement plan or offer their state-mandated IRA program. In terms of benefits, a 401(k) plan always outweighs any small business IRA plan because of potential savings and flexibility.

**It's not a patronage mill**

I was very involved in local politics when I was in college. I had a political mentor in college who was two years ahead of me. He was and still is, one of the greatest political minds I know, and he couldn't get a job with the local town, yet someone we knew who dropped out of college and had zero personality, got one. The local governments by me probably only exist to dole out jobs to friends and family, that's why my school district has become. People will tell me what's wrong with a school board member getting his son a job as a teacher or custodian. I believe any appearance of impropriety infers impropriety. If it looks bad, it is bad. Your 401(k) plan is for the exclusive benefit of your employees. It's not a vehicle to employ people you know. Hiring your bank to be the 401(k) third-party administrator (TPA) because they offer you a line of credit, looks bad. Hiring your nephew as the 401(k) advisor looks bad too. I worked at a TPA where they switched our 401(k) plan from a custodian I liked to an insurance company custodian that I didn't like. It was only done because the TPA wasn't selling a whole lot of business with this insurance company, so they made the switch to our $4 million 401(k) plan to preserve the premier pricing with that insurance company's TPA. No matter how much the boss could spin it, I knew what he did. As the turd in the lunch bowl, I spoke up to no avail. Just because I was the only one to speak up, doesn't mean many other employees don't feel the same way. Silence isn't acceptance, people are passive-aggressive, and they may not say anything at the moment with the fear of retaliation from you. The 401(k) plan is for the exclusive benefit of your employees, not to reward the buddies from the golf course.

**Communication is key**

I worked at a couple of TPAs for about 10 years and the communication from both



companies to their employees was poor. I jokingly said they'd let us know the place was out of business after locking the doors. I had one company lay off about a half dozen employees on Valentine's Day (the Syosset Valentine's Day massacre) and the next day, the survivors got free pizza. The optics were brutal, especially with the bosses away that Friday. Any long-term relationship I've had that failed (some good, a lot of bad) was because of a lack of communication. Again, I worked for a TPA that was in the benefits business and there was nothing worse when every late November, you get the notice that we were switching health insurance carriers to get less benefits and pay more for premiums. The notice was the new enrollment form, nothing else. Whatever you are doing with the 401(k) plan, let the employees know. That is in addition to the ERISA legally required notices that most participants throw away. I'm talking about letting them know of any impending changes to the structure, investments, or benefits. I'm not suggesting you add an employee representative to the 401(k) committee that oversees the plan, but offering an employee representative some say in the running of the plan will go a long way. If you make your employees aware of what's going on with their plan that has their retirement assets, that will lead to less behind-the-back griping by your employees. Communicating about changes is one thing, but don't forget to amplify what you're doing right. I worked for a miserable law firm and a miserable managing attorney who ran the firm into the ground. I assure you that if the law firm mentioned that all employees get a fully vested 5% nonelective contribution based on salary, that would have helped them forget we didn't have an advisor or fund lineup changes for 10 years because the human resources director was doing nothing as plan trustee.

**Get them educated**

Back in the old days, 401(k) plan sponsors went out of their way to avoid having enrollment/education meetings. Since they were conducted during the workday, they saw this as a waste of valuable time and money. Thanks to the uptick of 401(k) litigation over the past 15 years and providers who understand the nature of fiduciary liability, plan sponsors are more amenable to scheduling these meetings because they realize they limit their potential liability. 401(k) plans went to a daily valued, participant-directed investment model over the past 25 years. It was done because of technological advancement and mutual fund marketing. What plan providers failed to mention about the limited liability when participants made their own investment decisions was that they needed to be provided with enough information to make informed investment decisions. At the very least, you need to bring in your financial advisor to provide investment education. That's the talk about broad investment concepts. Of course, having the advisor provide specific investment advice, tailored to each participant on their retirement goals, is better. The days when you hand a participant with a copy of an enrollment form and some Morningstar investment profiles are over.

**Have some empathy**

Simply put, empathy is the ability to understand and share the feelings of another. While that concept may be simple to you, most of the employers I worked for, didn't have any. Whether it was the lack of bonuses, the reviews used to drive down my salary demands, or the poor benefits, I realized I no longer wanted to work for anyone. People want to feel like they belong somewhere and that their feelings matter. I'm biased, but aside from health insurance, the most important benefit is a 401(k) plan and if you have empathy and consider the feelings of your participants in every 401(k) decision you make, you will be miles ahead of most plan sponsors.

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