THE ROSENBAUM LAW FIRM P.C.

ADVISORS ADVANTAGE
A Publication for Retirement Plan Professionals

401(k) Plan Providers' Behavior To Avoid That Loses Clients.

Things to avoid.

Over the past 18 years as an ERISA attorney, I have some pretty weird reasons why retirement plan providers get fired. I'll never get the financial advisor who was fired because the client's new Chief Executive Officer wanted to hire a new advisor that he get a kickback from. I remember working at a third party administration (TPA) firm where we got fired because the previous TPA did more of the Human Resource Director's work and she resented that. While these crazy stories will last the rest of my career, most plan providers are fired because of legitimate reasons including the behavior of the plan provider in dealing with this now former client. So this article is about what types of behavior that a plan provider should avoid exhibiting if they want to keep their clients.

To read the article, please click here.

Who is the biggest 401(k) Recordkeeper and what really matters.

What the numbers mean.

planadviser

A few weeks back, I wrote an article about 401(k) hustlers you should watch out for and I mentioned the caveat of using a payroll provider as your 401(k)'s third party administrator (TPA). I posted it on LinkedIn and someone commented that they would want to use a payroll provider TPA especially when they were the biggest TPA in the business. If you looked at the profile of the person who commented, you'd find out that he actually worked for that plan provider. Kind of like me saying how The Rosenbaum Law Firm is the #1 ERISA National Law Firm out there without recognizing that I work there.

Anyway, I looked at the 2016 PLANADVISER Recordkeeper Services Guide, which does a great job of breaking down who are the biggest TPAs out there by number of plans, participants, and assets under management. So that person who commented on LinkedIn might be happy that his employer administered the most defined contribution plans at 72,000, I think there are some data in the survey that would put an asterisk on him claiming they were #1.

While the payroll provider has the most plans, they weren't even in the top 20 list of largest TPAs in assets under administration and what I think is the most important survey, they weren't even in the top 20 list of TPAs in number of participants. So that means they handle the most plans, but they handle plans of small employers perhaps companies with only a handful of employees. While some in the payroll business will say that's what happens with payroll provider TPAs, their biggest competitor is #3 in the list of most plans under administration, they are #20 in plan assets and #18 in number of participants.

Based on how I look at who is bigger, I think of plan participants because larger plans have more intricate plan designs especially when it comes to important issues like new comparability allocations and safe harbor plans. Small plans have issues too and you can certainly look at my half dozen articles out there why you shouldn't hire a payroll provider TPA.

As far as these surveys, it's great to know who are the biggest providers out there. However, as a plan provider, selecting a provider just because they are the biggest is absolutely a bad idea. While you should certainly avoid a TPA that only handles a dozen plans, selecting a plan provider just on size is a recipe for disaster. Selecting a TPA should be based on fit and the plan sponsor's needs in terms of plan design and size. Sometimes, a 1-2 person plan with a safe harbor design is a good fit for a payroll provider because they'll have a tough time in screwing up the administration. So these surveys are great insight, but not a laundry list for plan sponsors to pick a TPA because there are dozens and dozens of great TPAs that aren't on that list that would probably be a better fit.

Sometimes it's about control.

Can't do anything about that.

As a retirement plan provider, you meet a potential client and you just do so well in the meeting that you think there should be no way that you're going to lose this prospect. Yet you get the call that a competing provider got the job and you're just shocked that you lost to that person. Sometimes you lose because of all the decision makers you talk to, it might be one decision maker that felt the need they had to exercise control. They weren't concerned with picking the best provider for the plan sponsor, they were just interested in flexing their muscle and picking whom they wanted to pick.

When I hear about a plan provider flabbergasted that they weren't selected in a process they thought they won, I always relate a story where I say I was the most insulted in the 18 years of being an ERISA attorney and it shows you the essence of someone wanting to be in control.
I've told a story quite a few times and including in that Kindle book a few dozen of you actually bought. I was working at that semi-prestigious law firm as an associate and I was asked by the human resources director to look at our 401(k) plan.

Our 401(k) plan despite having an ERISA practice had one of the worst plans I've seen. The human resources director was a plan trustee and decision maker except it didn't appear she made a decision in 10 years because the plan had no financial advisor, no investment policy statement, no review of fees, no education to plan participants, and no change of investments for 10 years,
I told her the first thing she should do is find a new financial advisor. With my many

contacts in the business, I gave her a list of 2-3 advisors to contact. Of course she hired the advisor that the Fidelity representative in the area (who I recommended the human resources director speak to) recommended.

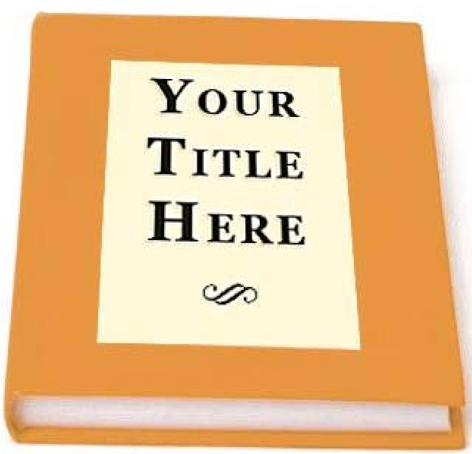
The human resources director and the new financial advisor told me up and down that they were happy with the current third party administrator (TPA) and I was fine with that. The Fidelity representative was there when needed, I thought. Anyway, the human resources director finally discovered the plan had revenue sharing and flipped out. So without consulting me or contacting me, they went through a process to replace the TPA with the advisor making recommendations. Well, they selected a bundled insurance company provider as a TPA and it certainly wasn't Fidelity despite the representative's help in getting the advisor that gig.

I was terribly offended because I thought being the in-house 401(k) expert, I should have been consulted because I believe you should always get an insight from the expert.

I got the last laugh many years ago when another trustee from the law firm called me years after I left, asking to help the plan go through a huge error caused by that insurance company TPA. I was already to go in and help fix the mess of that 401(k) plan again until the human resources director (after having been lambasted over this for the last 6 years by me) put an end of it. Again, sometimes it's all about someone wanting to exercise control whether they are the right person to have control and regardless of whether they make the right choice or not.

Titles mean nothing; responsibilities mean everything.

It's about doing the work.



When I was younger and it involved with student organizations, there was this saying that you should give people a title and get them involved. Making someone the assistant editorial page editor at the school paper was fine as long as they did the work. Otherwise, it's meaningless to have a title without having any responsibility.

As a plan provider or someone working for a plan provider, I think people are more interested in titles than the responsibilities that go with it. I saw it in the non-profit organization that I was the VIce President. Your have people get titles that they were in charge of some committee or auxiliary organization and they were content to doing nothing. On the flip side, I demanded I be made Vice President because I was doing a ton of work and I wanted a say in how the organization was being run. When I found out that the organization was being led by 5 people who were unelected and I was just a figurehead, I stepped down. What's the point of having the title if you don't have any responsibility and call the shots?

Titles look good on a resume, they sure do, but if the requisite experience isn't behind it, what's the point? They're going to find out somehow. I remember when I got ticked off at law school that I didn't make law review or another journal that I decided to start my own. After I realized the struggle to start one and the fact that the administration would do noting to get that off the ground, I thought calling myself the Editor in Chief of a law journal that was never going to be published was awfully silly.

The point is the work you do is more important than the title. When I got named the head ERISA attorney at a third party administration firm and was named a company director, it wore out thin especially when being director means you got a nice desk clock and no say in the running of the place.

The other issue in titles is something I'd discussed a few weeks about what I call "top heavy" administration where a company has too many generals and not enough soldiers, giving people titles that are more important than their actual job can give people an arrogance that the company doesn't need and people stop doing work that they think is underneath their title. I told the story of a plan administrator on the first day on work where the administration firm had nothing for her. When asked to help out and make some copies of plan documents, she quit on the spot.

Heck, you can call yourself the King or Queen of 401(k), but it becomes a joke when your work doesn't live up to the title.

You Know Jack.

He's the person who doesn't know when .

Working for organizations whether it was companies I worked for or for outside activity organizations, there are always going to be the same type of person I was going to have a problem with. It's always the same recurring thing and I have yet to develop an "antidote" on how to deal with this type of person.

Let's just say that person is Jack and you know Jack. Jack is the person that has been with the organization since the year of the flood and might have been one of those who actually founded the organization. While Jack did a ton of good for the organization, he hasn't done much in a very long time and the problem is that Jack doesn't get the subtle hints that he should take a back seat in the decision making process. The problem with Jack is he really doesn't care about the organization, all he cares about is his spot and that spot is being in the decision making process. Jack won't be friendly to anyone who will threaten his spot and he would take anyone with some competence and vision as some sort of threat. Jack wants the status quo and doesn't want the organization to improve because he's afraid of losing control over his spot.

I worked for a third party administration (TPA) where Jack would push out anyone who were doing excellent work and would show that maybe Jack isn't so competent and that maybe it's time for Jack to take a step back. If I can tell you the amount of people that Jack has pushed out, you would have an all star lineup of retirement plan heavyweights including some people who created their own TPA, the best operations person you ever met, and some ERISA attorney who writes a lot.

The problem with Jack is telling him that his time is up. Not many people can pick up the social cues out there that it's time for them to step back. People are very sensitive and I'm sure someone like Jack are extremely sensitive because they might have a sense of entitlement because they worked for that organization for a very long time. Forget negotiating peace in the Middle East, I think having the sensitivity to tell Jack that he needs to leave his spot is going to be very difficult and people tend to avoid difficult things in the workplace.

It's hard to tell someone that the organization they helped built maybe better off with new voices in the decision making process. As I always say, Steven Wozniak left Apple and not everyone who was a founder or someone who helped at the beginning needs to still be at the controls.

You know Jack and he's no Jack of all trades, he's got one mission and that's to protect his spot.

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The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
516-594-1557
Fax 516-368-3780

ary@therosenbaumlawfirm.com
www.therosenbaumlawfirm.com