

Close Up

Brian Lakkides

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As more Americans rely on self-funded 401(k) plans to ensure a financially sound retirement, a more critical eye is being placed on the management of those plans. Businesses small and large might be guilty of perpetrating fraud without knowing it. Brian Lakkides, president of Corporate Plan Administrators in Waterford, says many companies are not aware that employers are fully liable for many aspects of employee retirement accounts even if they outsource administration of those plans.

Q: What is happening in some 401(k) plans?

A: The big issue coursing through the 401(k) environment that is being addressed at the congressional level has to do with fees. About 80 percent of employers use bundled 401(k) plans in which an investment company sells them a turnkey package to handle everything from select-

ing the mutual fund companies to managing the administrative tasks. The problem is that most 401(k) vendors charge many fees that are very hard to quantify. A practice known as revenue sharing allows mutual funds, which have their own internal operating ratio to fund research and staff, to use a share class with a higher than normal internal expense ratio and kick that upstream to the 401(k) vendor. This allows 401(k) vendors to offer quite low visible fees during the sales process and then make up for it through the revenue sharing arrangement. This is legal, but the ethical issue is that it misleads the employer on the true cost of the plan.

Q: What is the problem for employers?

A: Under ERISA, the federal law governing 401(k)s, plan sponsors have a fiduciary responsibility to monitor all fees that are being extracted out of the 401(k) to ensure that employees are not paying excessive fees. Employers are liable for that, even though practices like revenue sharing make it impossible to do so. This is especially prevalent in small to midsize companies that often hire outside 401(k) service providers, because they often don't have a large H.R. or benefits staff to handle it themselves. But when these providers do not disclose their fees, it puts employers in the crosshairs of ERISA violation.

Q: What lawsuits are being filed?

A: A class-action lawsuit was filed against companies including Boeing, Caterpillar and United Technologies. These large companies were sued by employees who said

they were not upholding their responsibility to monitor fees, resulting in higher fee payment and diminished investment returns. The failure to monitor expenses is the number one cause of ERISA action by the government.

Q: How did this situation come to your attention?

A: A supermarket chain approached us to redesign their plan. What we noticed in the process was that we eliminated wasted money on excessive fees, reducing employer's expenses by more than \$3,000 a year and saving employees a 10 percent reduction in their overall fee structure.

Q: What's your advice to business owners?

A: The first thing employers need to do is receive clear, written documentation of all the fees being charged in their plan collected by the 401(k) provider, the third-party administrator, and the mutual funds inside the 401(k) plans. The second thing is to demand a review of all the fees with full disclosure each quarter – not just percentages but actual dollars and cents of what has been collected out of the plan that quarter. Then they need to annually or at least once every three years go back to the marketplace and compare the expenses they are paying in their current plan with what they can negotiate. What most will find, especially in small to mid-size companies, is that they are grossly overpaying for their 401(k) plan.

■ Laurie Ryba