

The Most Absurd Things About 401(k) Plans That Sponsors Have No Idea About

By Ary Rosenbaum, Esq.

Fifteen years into my solo practice, you'd think I'd be desensitized to the absurdities of the 401(k) world. But no. Every time I think I've seen it all, a plan sponsor, or more accurately, the people advising them, reminds me that logic is a luxury and absurdity is the norm. The 401(k) industry, for all its good intentions, is a Frankenstein of regulatory patchwork, financial conflicts, and blind spots big enough to drive an 18-wheeler full of plan errors through. If you're a plan sponsor and think you've got it all figured out, I'm here to ruin your day, constructively. Let's talk about the most ridiculous things about 401(k) plans that most sponsors have no clue about.

1. You Can Sponsor a 401(k) Plan and Not Know You're a Fiduciary

This is the big one. The moment you say, "Yes, I'd like to sponsor a 401(k) plan," you've just become a fiduciary under ERISA. That's not a title you wear like a name tag; it's a legal status with teeth. You can be personally liable for breaches. And yet, I've lost count of the number of sponsors who say things like, "But our advisor takes care of all that." No, they don't. Not unless you've hired a 3(38) investment manager in writing, and even then, you still have monitoring duties. It's like giving your car keys to someone and thinking the DMV won't hold you liable when it's driven off a cliff.

2. Your Plan Document Is a Legal Document, Not a Brochure

It baffles me how many plan sponsors don't know what's actually in their plan document. And I don't blame them en-

tirely, the document is usually drafted by someone at a third-party administration firm (TPA) who doesn't even bother to explain it. But this thing isn't some passive record to stick in a drawer. It's a legally binding contract that governs how the plan operates. If your operations don't match the document, you're in violation. That's like running a train on a map that



goes in the opposite direction. And yes, the Department of Labor (DOL) will care.

3. The Highly Compensated Employee (HCE) Rules Are the Bermuda Triangle of Plan Design

You wouldn't believe how many sponsors are shocked when they find out they can't make large contributions for their owners because of HCE discrimination testing. The IRS wants your plan to be fair, which in ERISA-speak means low-paid employees

must receive proportional benefits to high-paid ones. So you have a business owner who makes \$300,000 and wants to max out their contribution, only to find out that their plan fails the ADP test because no one else is contributing. There are safe harbor designs to fix this, but what's absurd is that most plans aren't designed that way from the outset. They're sold a "free" prototype plan from a payroll provider, only to find out it's basically useless for their actual goals. Congratulations, you're saving thousands on plan administration and leaving tens of thousands on the table in tax savings.

4. The Solo 401(k): Free and Dangerous

If you've read my work, you've heard this rant before. The solo 401(k) is pitched as a no-brainer to sole proprietors and one-person businesses. No employees, no problem, right? The problem is when they unknowingly violate the solo plan status. The moment you hire an employee who meets eligibility, it's no longer a solo plan. And that "free" plan from your brokerage firm isn't going to warn you. It's going to let

you run that plan improperly until someone (the IRS) asks why you didn't file a Form 5500-EZ or give that new employee a chance to participate. And by then, you're hiring me to clean up the mess.

5. Nobody Reads the 408(b)(2) Fee Disclosure

There is a fee disclosure regulation that requires service providers to tell plan sponsors what they're charging. The problem? It's written in the language of Mordor.

Most sponsors have no idea what they're looking at. I've seen TPAs bury their asset-based fees in footnotes. I've seen advisors disclose indirect compensation like 12b-1 fees in such a way that you'd need a forensic accountant to catch it. The absurd part? The plan sponsor signs off on it, and if those fees are unreasonable, guess who the DOL holds responsible? You, the sponsor. Just because you didn't know doesn't mean you're off the hook.

6. Payroll Is the #1 Source of Plan Errors—and Nobody Connects the Dots

Plans don't operate in a vacuum. They rely on payroll to function properly—deferrals, match, eligibility, loan repayments. If your payroll system isn't aligned with your plan terms, you're inviting disaster. Yet, almost no plan sponsors cross-check this. I've seen plans where eligibility was misapplied for years because the payroll system was tracking hire dates differently. Or plans where the match was calculated incorrectly because the payroll software was rounding the deferrals. And guess what? When these errors are discovered, it's on the sponsor to fix them, and potentially make participants whole.

7. You Think Your TPA or Advisor Works for You. They Might Work for Themselves.

Let me be blunt: Not all TPAs and advisors are looking out for you. Many are looking out for their bottom line. Some are compensated based on the assets in the plan. Some have cozy revenue-sharing deals with fund providers. Some build in administrative fees that scale with plan assets even though their services don't. And most plan sponsors don't ask, because they think a glossy pitch deck and a smiling rep means loyalty. If you're not asking your providers how they get paid, you're probably paying too much, and not getting enough.

8. Most Plan Sponsors Think Their Plan Is "Fine" Until the DOL Shows Up

You wouldn't believe how many sponsors tell me their plan is in great shape,



until I do a compliance review and discover three years of missed deferrals, operational failures, or late deposits. The DOL loves late deposits. Even if it's a few days late, that's a prohibited transaction requiring correction and reporting on Form 5330. And no, your accountant probably didn't tell you that. The absurdity is that most of these issues are easily preventable with basic monitoring and an independent review. But people only care when there's a penalty letter in the mailbox.

9. The Plan Audit Threshold Is a Cliff, Not a Slope

Sponsors think, "We have 100 employees—no big deal." Except at 100 eligible participants with an account balance, you hit the threshold for an annual plan audit. That's not a minor detail; it's a major cost, often in the five figures. And worse, you might already be at 100 eligible participants and not know it because you haven't excluded terminated employees with balances. The audit cliff is real, and many sponsors drive off it without knowing until it's too late.

10. Bundled Providers = Bundled Problems

There's a myth that bundling everything: recordkeeping, TPA, investments, with one provider is easier. It might be easier,

but it's not better. When everything is bundled, nobody checks anybody else's work. Errors get buried. Fees get obscured. Fiduciary protections go missing. And when you finally realize your bundled provider has made a costly error, you'll learn the hard way that suing your own service provider while they hold your data hostage is a tough position to be in.

Final Thought: Absurdity is the Norm, Not the Exception

If you're a plan sponsor and any of this sounds new to you, that's okay, but now you know. The 401(k) system isn't simple. It's built to benefit participants, sure, but also to profit a lot of middlemen. The absurdity isn't just in the rules, it's in the illusion that you're not responsible

for understanding them. If you've learned anything from my writing over the years, it's that the price of ignorance in the 401(k) world is high. It's not just about fines and corrections. It's about broken trust, lost retirement savings, and the slow erosion of a benefit that should help people retire with dignity. My job isn't to scare you. It's to arm you. Because when you finally see through the absurdity, you can start protecting yourself, and your employees, the way ERISA intended. And that, my friends, is a sane response to an insane system.

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