401(k) Plan Sponsor Concerns: The Big Ones.

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Being a 401(k) plan sponsor has a lot of tasks and this article is all about the big ones.

Form 5500: It's Not Optional (Unless You Like Trouble and Pain)

In the retirement plan world, there are two types of plan sponsors—those who understand the importance of filing a Form 5500, and those who find out the hard way. Let's be clear: if you sponsor a 401(k) plan and have an employee, filing a Form 5500 each year isn't a suggestion. It's a requirement. The Department of Labor (DOL) and Internal Revenue Service (IRS) aren't asking nicely—they're demanding it. Form 5500 is how you report your plan's financial condition, investments, and operations. It's the retirement plan equivalent of filing your taxes, except the penalties for skipping it can be even more painful. Some plan sponsors don't take it seriously. They think, "Well, we're a small company," or "We didn't make any changes this year," or "Our TPA handles that." Let me stop you right there. None of those are excuses. If you have a plan, and it's subject to ERISA, you have to file. And no, your TPA might not handle it automatically. Many will prepare it—but they won't file it until you sign off. I've seen more than a few plan sponsors assume it was taken care of, only to get a nasty letter from the DOL six months later, followed by a five-figure fine. Not fun. And it's even less fun trying to explain to the CEO or your board why the company is now paying penalties for a plan no one bothered to file a form for. Missed the deadline? You better fix it fast. That's what the DOL's Delinquent Filer Voluntary Compliance Program (DFVCP) is for—it gives plan sponsors a chance to come clean at a reduced penalty rate. But once the DOL catches you before you catch yourself? The discount disappears. You're paying full freight. And don't forget, this isn't just paperwork—it's a fiduciary obligation. As a plan sponsor, you're responsible for operating the plan in compliance with ERISA. Failing to file a Form 5500 isn't just a procedural misstep—it's a breach of fiduciary duty. That opens the door to liability, penalties, and a whole lot of regret. Bottom line? File the Form 5500. Make sure it's accurate. Make sure it's timely. Make sure it's signed. And follow up with your TPA or whoever's preparing it. Because in this business, the worst mistakes are the ones you didn't know you made until it's too late.

Timely Salary Deferral Deposits: Don't Play Keep-Away With Your Employees' Money

Certain things in the retirement plan world are non-negotiable. Timely depositing employee salary deferrals into the 401(k) plan is one of them. I shouldn't have to say it, but based on how many DOL enforcement cases involve this issue I do. Let me be blunt: those salary deferrals? That's not your company's money. The second you withhold it from your employees' paychecks, it becomes plan assets. And under ERISA, plan assets need to be deposited "as soon as administratively feasible." That's not legalese—it means if you can do it within a few days, you better do it within a few days. The DOL has laid it out in black and white: if your company has under 100 participants, you've got seven business days. That's the safe harbor. But if you can do it faster—and most payroll providers can—you're expected to. There's no prize for dragging your feet. I've seen plan sponsors hold deferrals for a week or two to "help with cash flow." That's not a solution—that's a prohibited transaction. You're commingling plan assets with company assets. That's a violation of trust, fiduciary duty, and ERISA, all rolled into one. You might as well light a flare for the DOL and say, "Audit me, please."And here's the kicker: the penalty isn't just a slap on the wrist. Late deposits mean lost earnings, which the plan sponsor has to make up. On top of that, you get to file Form 5330 and pay a 15% excise tax to the IRS for the privilege of making a prohibited transaction. It's like getting a parking ticket and then being told you also have to repave the street. Worse yet, late deposits are one of the most common reasons for DOL audits. Think about that. With all the complicated things a plan sponsor can mess up, simply not making deposits on time is one of the easiest ways to end up under a government microscope. So what should you do? Keep a written policy. Monitor your payroll timelines. Work with a payroll provider that knows what they're doing. Don't assume your TPA is handling it—they're not. This one's on you. Because at the end of the day, plan sponsorship isn't just about offering a benefit—it's about fulfilling a responsibility. And that responsibility starts with putting your employees' money where it belongs: in their accounts, as soon as possible.

ERISA §404(c): You Can't Blame Participants If You Never Gave Them the Map

There's a common myth floating around among 401(k) plan sponsors that as long as participants choose their investments, the sponsor is off the hook. That myth is usually backed up with a confident, "We're covered under 404(c)!" But here's the problem: just saying you comply with ERISA §404(c) doesn't make it true. This isn't a magic spell—it's a rule, and like all ERISA rules, it comes with strings attached. Let's break it down. ERISA §404(c) allows plan sponsors to limit their liability for participant investment decisions if—and it's a big if—participants are given enough information to make informed choices. That doesn't mean tossing a 200-page prospectus on someone's desk once a year and calling it a day. It means actual, understandable, timely information. Participants need to know what their investment options are. They need to know the risks, the fees, and the objectives of each fund. They need access to this information before they invest and whenever things change. And let's not forget: they also need the opportunity to move their money around with reasonable frequency—at least quarterly. I've seen plans tout 404(c) protection and then do absolutely nothing to educate their participants. No investment education, no guidance, no clear disclosures. That's not 404(c) compliance—that's a lawsuit waiting to happen. Because when a participant loses half their account in a fund they didn't understand, guess who they're coming after? It's not the mutual fund company—it's you, the plan sponsor. You can't say "It was their choice" if you never gave them the tools to make one. ERISA doesn't just ask for the right to choose—it demands the right to informed choice. And if you're relying on 404(c) protection without fulfilling your disclosure and education obligations, you might as well be relying on a napkin with "Good Luck" written on it. So what should plan sponsors do? Hire an advisor who helps you: 1) Make sure you're giving participants a clear explanation of each investment option—fees, risks, objectives, the whole picture; 2) Offer investment education regularly—webinars, workshops, whatever works for your group 3) Ensure your recordkeeper or TPA is doing their part, but don't assume they're handling it unless you've verified it yourself. 4) Document everything. If it's not written down, it didn't happen. ERISA §404(c) can be a shield—but only if you build it properly. Otherwise, it's a fig leaf.

Your 401(k) Plan Is Not a Crockpot—You Can't Just Set It and Forget It

I've been in this business long enough to know that many 401(k) plan sponsors think of their retirement plan the way they think of a slow cooker: throw everything in, turn it on, and walk away. Come back in a few years, and maybe check if everything still looks fine. That's not how it works. If you're a 401(k) plan sponsor, your fiduciary duty isn't something you fulfill once a year at your TPA's annual review meeting over stale coffee and a 40-page printout no one reads. Fiduciary responsibility means constant monitoring—of fees, providers, and your plan as a whole. Let's talk fees. Plan sponsors have a legal obligation under ERISA to ensure that the fees paid by the plan—whether to TPAs, financial advisors, recordkeepers, or investment providers—are reasonable. Not cheapest. Not the most expensive. Reasonable. That means knowing what the plan is paying, who it's paying, and what you're getting in return. If you haven't benchmarked your plan's fees in the last three years, you're overdue. And no, "we like our provider" isn't a defense in an audit or a lawsuit. Now let's talk providers. You wouldn't hire a babysitter and never check in on your kids, right? So why would you hire a recordkeeper, TPA, or advisor and never evaluate whether they're still the right fit? Providers change. Your needs change. The market changes. What worked in 2015 might be completely outdated in 2025. And then there's the plan itself. Demographics matter. If your workforce used to be mostly older, higher-paid employees and is now filled with younger, mobile workers, your plan design might need to adapt. New comparability might no longer work. Maybe a safe harbor plan would be more efficient. Maybe automatic enrollment would increase participation. You won't know unless you're paying attention. Here's the bottom line: being a plan sponsor isn't a title—it's a job. And like any job, if you don't do it well, there are consequences. The Department of Labor doesn't care if you're busy. Plaintiffs' attorneys won't care that you were "too small" for a full review. Fiduciary duty means staying engaged, asking questions, and making changes when necessary. So if your idea of plan oversight is waiting for your providers to tell you everything's fine, it's time to wake up. Because fiduciary responsibility isn't about comfort—it's about accountability.

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