

The Truth Shall Set You Free As A 401(k) Plan Provider

By Ary Rosenbaum, Esq.

Our lives are the sum of our choices. How we act and choose to interact with other people can have a bearing on our business as 401(k) plan providers. I may be good at a lot of things, but lying isn't one of them. I wasn't good at it and even if it was done sometimes to avoid greater harm (my parents complaining about my grades), I would always get caught. The truth is the property of being in accord with fact or reality. As a retirement plan provider, the truth will help you and set you free. This is all about using the truth as a 401(k) plan provider, the plusses, and the perils of offering it.

Your reputation means everything.

The 401(k) plan business seems large, yet it's a small world after all (I hear a Disney song in my head). I have been practicing in the 401(k) world for 26 years and the beauty of it is that you learn something new every day. The laws and regulations change, attitudes change, and the business is constantly in a state of flux. Sometimes I am amazed by what I see and some of those things are from first-hand experience. The only thing that I always know about being in this business is that since it's so tightly knit and people know everyone, your reputation is more important than anything. This business requires a lot of trust and a lot of faith. Whether it's working with other professionals or whether it's using a plan custodian or third-party administrator to handle your money, trust is also an important tool. We can all talk about fees, how some businesses op-

erate, and whether a bundled product is a good idea for a 401(k) plan, but your reputation means everything. I remember a person who was in this business for 25 years. While he might have been a miserable and cheap person, he helped build a large retirement plan business from nothing. How he built is up for debate, but he had a reputation as being very successful in the retirement plan business. After I left, a few years later, he had to retire in disgrace because of the way he conducted his busi-

ness, for cheating clients or doing something improper, we are going to have that scarlet letter in the retirement plan business and you learn very hard that people never forget a poor reputation in this business.

Don't confuse opinion with truth.

I'm a little outspoken, certainly too much. I am what I am. I have strong opinions about things, including the 401(k) business. What I express are opinions, not facts. Opinions are not the truth. We can debate opinions, we can not debate facts. Every year, I write an article about my negative opinions about payroll provider TPAs. When I first started writing these articles about 15 years ago, I'd get criticism from employees of payroll provider TPAs that my opinion was wrong. My opinions are shaped by my experiences, as a TPA attorney, and as an ERISA attorney working for clients who had compliance issues after firing their payroll provider TPA. I'm sure that there are plenty of plan providers who disagree with me, that's fine. I once had a plan sponsor contact me, who was using a payroll provider TPA and was perturbed by my opinions and want-

ed to debate me like I was some sort of Presidential candidate. Expressing your opinion isn't telling the truth, it's just expressing your view. Don't forget that.

Being truthful to employees

As I always stated, I have never had employees because I was an employee once too. Perhaps, I was a malcontent who always wanted to be on my own. I will con-



ness. So in an instant of greed, a reputation was lost. A reputation that will never be repaired even if he is now allowed to run a Third Party Administration (TPA) firm. Despite the way he may have wowed some clients and some business partners, he is a ruined man in the business because he put greed in front of his clients. We can all debate our views in any forum we choose, but if we have a reputation in this business



test that I wanted to be on my own because I was miserable working for others. As employees, we were always the last to know anything. Bonuses never existed and we were constantly being lied to. Your employees are your most important asset and you need to be honest and transparent with them. Whether it's the health of the organization, pay, or benefits, you must be truthful with your employees. You can't expect loyalty from your employees when your lies make you disloyal to them. Treat your employees with respect. They're no intangible assets, they are human beings with feelings. They don't want to be lied to. Be honest and transparent with them.

Please don't lie to other providers or lie about them.

Treating other plan providers with contempt and lies will lead to a terrible reputation, I will never forget going to a financial advisory office and being told that a former boss of mine was barred from the premises for stealing an advisory client for the advisory arm of his producing TPA. You will be judged for your work, but you will be judged on how you play well with others. It's like Kindergarten all over again, but sharing toys isn't what's going to build your reputation. What will harm your reputation is if you don't play nicely with other providers. I'm not talking about taking business from another provider you're succeeding because they got fired. I'm talking about stealing business from people who

refer you to business. I'm talking about talking disparagingly about your competitors. I'm talking about talking disparagingly about providers you work with. Years ago, we had neighbors down the block who we were very friendly with because the wife was a sorority sister with my wife at the same university. We heard the wife talk badly about her other friends including the next-door neighbor who lent them money. The way I figured, if they talk bad about these friends, what do they say badly about us? Sometimes, I go a bit too far in knocking former employers. Not because I feel bad about these former employers, it just doesn't put me in a good light. Another mistake is to stiff other plan providers. As many of you are aware, I worked closely with a TPA that wanted to make it big in the Multiple Employer Plan space. They took too long to get to the market and the owner of the TPA started stiffing business partners and employees, it was no surprise he stiffed me. I ended up having to sue them in court for fees owed. For months and months, the owner of the TPA lied about promising to pay me, especially after half my house was destroyed after Hurricane Sandy. You can't afford to burn bridges in the retirement plan world by lying.

Don't lie to your clients.

Before fee disclosure, there was a lot more lying to plan sponsor clients. The lying was through omission. TPAs and advisors that were steering plan sponsors

to certain revenue-sharing paying funds or those that paid 12b1 fees to certain advisors were lying by omission. Indirect fee payments should have been disclosed and they didn't have to be disclosed until fee disclosure regulations were implemented in 2012. These days, the lies I see mainly are about plan errors where a plan provider lies and disclaims any liability for the mistakes they make. It might be the financial advisor who tells a plan sponsor to switch stable value funds without admitting that it could cost the participants through a market value adjustment. It could be the TPA that allocated a contribution that was inconsistent with the terms of the plan document. Too many providers because they don't want the liability that goes with an error they make. I remember the TPA that didn't bother to label the wife and daughter of a named law firm partner as a

key employee which led to an incorrect Top Heavy test result and tried to blame the law firm for the mistake that wasn't detected for two years. The first job I had was working for Harvey Berman who co-owned a struggling TPA on Long Island. One of the TPA's staff members made some incorrect trades that cost a 401(k) plan for a client. Harvey accepted the liability and said that this is why there was an error and omission insurance policy. We are not children who broke a vase playing ball or got a 60 in high school Latin, we need to put on our grown-up pants and accept responsibility for the errors we make.

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