Employee Benefits Report

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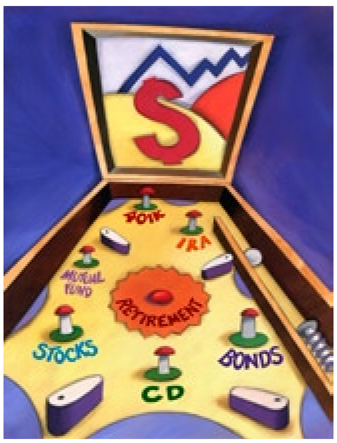

Common 401(k) Plan Administration Mistakes & How to Avoid Them

If you've spent any amount of time administering 401 (k) plans, you know they require a great deal of regular care and maintenance. You certainly don't want to make a mistake that might affect the retirement income of one or more of your company's employees or subject your company to regulatory penalties.

Here are a few common 401(k) management mistakes and how to fix them:

1 The plan document has not been updated within the past few years to reflect recent law changes. Laws related to retirement plans change quite frequently, and the IRS generally establishes firm deadlines for adopting these changes.

FIX: Use a calendar tickler to remind you when amendments must be completed. Review your plan document annually. Adopt amendments for missed law changes. Maintain regular contact with the company that sold you the plan.

2 The plan's operations do not match the terms of your plan document.

FIX: Failure to follow plan terms is a very common mistake. Get an independent review of your operations. Then develop a communication mechanism to make all relevant parties aware of changes on a timely and accurate basis.

3 The plan's definition of compensation is incorrect for some deferrals and allocations.

FIX: Perform annual reviews of compensation definitions and provide training for the person or people in charge of determining compensation.

4 Employer matching contributions were not made to all eligible employees.

FIX: Review the plan document to determine the correct matching contribution formula and compare that to what's being used and make the contributions. Ensure that the plan administrator has the employment and payroll records needed to make the calculations.

5 The plan isn't fully satisfying Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) nondiscrimination tests.

FIX: Initiate an independent review to determine if highly compensated and non-highly compensated employees are properly classified.

6 Not all eligible employees are identified and given the opportunity to make an elective deferral.

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This Just In

Post-retirement medical benefits, including 419(e) plans, are becoming more common and increasingly viewed as a desired benefit. High-risk professionals and those in closely held businesses value these plans for asset protection reasons. Although 419(e) plans can be a tax-efficient way to provide post-retirement medical benefits and pre-retirement life insurance benefits, many employers do not know much about them.

Basically, a 419(e) plan is a single-employer welfare benefit fund that provides benefits to employees ranging from death benefits during their working years to medical and long-term care benefits in retirement. "Welfare benefit" has a broad definition and covers any benefit other than pensions, such as medical, disability, vacation benefits or training programs.

Despite the wide range of benefits provided in a 419(e) plan, the benefits most often offered are pre-retirement life insurance and post-retirement medical benefits.

Building a Business Case for Work/Life Benefits

Survey after survey show that "work-life" benefits top the list of most desired benefits among employees.

It's not surprising, then, that companies are responding. Seventy-one percent of employers said they offered flextime, up from 32 percent in 1996, according to a survey by Mellon Financial. And half of employers offered work-at-home options, compared with just nine percent in 1996.

Today, however, work-life means far more than a flexible schedule; it requires the development of a culture, policies, and programs that are geared toward providing quality of life for all employees in the workforce. Here are tips from the Alfred P. Sloan Foundation and the Families and Work Institute on promoting work-life benefits in your workplace:

See flexibility as a strategic business tool. Research by Families and Work Institute reveals that flexibility is a vital component of an effective workplace – even more so than learning opportunities, input into management decision making, job autonomy, and supervisor and coworker support for job success.

In the past, flexibility was seen at best as a "perk" or an accommodation to employees and at work as a business problem. Not any more. It's clear that work-life benefits are powerful recruitment, retention, and motivational tools.

Be clear on the business gains you plan to achieve. Are you competing for top talent? Trying to reduce the costs of hiring new people? Reduce turnover? Make sure that you know what you want to achieve and, if possible, put metrics into place to measure your success in making change. This can also help reluctant management understand the advantages of work-life benefits.

Involve top and middle management. Involve your top people from the start, and communicate the business gains you expect. If they have reservations, respond by offering to try a pilot first and then assess its impact on business gains. Top leaders always want to learn what other competitors are doing, so share stories from companies they respect. You also need to involve middle managers in the change process. Begin with a pilot using managers who want to experiment. Then you can let the success stories spread, manager to manager.

Find out what aspects of flexibility employees value most. It is important not to try to solve a problem unless you are clear about what the exact problem is. Start by bringing together small groups of people for informal discussions and asking them what kinds of flexibility they need. Typically, employees describe needing flexibility when emergencies arise, such as a sick child or the need to take an elderly parent to the doctor.

Define flexibility as working for both the employee and the employer. Flexibility has to benefit both the employee and the employer. Ask employees how having flexibility will maintain or improve business results and make sure that the employees know that they are accountable for these results. Include in the discussion how the employees will ensure that work gets done on time and that deadlines are met. Are they willing to come in earlier? Work from home at times? Setting the stage with this dual perspective will help make sure that flexibility helps both your organization and your employees.

Keep scheduling simple. Managers in many flexible organizations sometimes let their employees plot out their schedules for a stated period of time—every month, for example, or every quarter. Using a big calendar, staff members work among themselves to commit to specific days and hours, ensuring full coverage. According to a survey by the Government Accountability Office, employees place great value on these arrangements and make them work.

Put your technology to work. Most employers use a fraction of the technology they have on hand. Work with your IT department or outside consultant to fully exploit your telephone, computer and e-mail systems in ways that allow all the organization's people to remain in immediate touch whether they're in the office, at a relative's bedside or waiting for a flight in an airport.

Communicate about flexibility. Put information about flexibility on your internal Web site if you have one. Talk about flexibility in meetings and generally integrate the message into whatever communications you use in your organization.

Create a culture of flexibility. Companies create a culture of flexibility by having their top leaders speak out about flexibility, by including questions on flexibility on organizational surveys and rewarding those who manage it best. Consider also having a "flexibility facilitator" help resolve conflicts or help find creative solutions that benefit employee and company.

Ensure that managers who use flexibility well are recognized and rewarded. This will inspire other managers to promote flexibility options in their departments.

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FIX: Inspect payroll records to extract the total number of employees, birth dates, hire dates, hours worked and other pertinent information. Also inspect W-2 and State Unemployment Tax returns to see if employee counts are accurate. If an employee was not provided the opportunity to make to an elective deferral, make a qualified non-elective contribution (QNEC) to the plan on the employee's behalf.

7 Elective deferral distributions exceed amounts under IRC section 402(g) for the calendar year.

FIX: Provide plan administrators with sufficient payroll information, inspect deferrals amounts for plan participants and distribute excess deferrals.

8 Failure to make timely deposits of employee elective deferrals.

FIX: Coordinate closely with the payroll provider to determine the earliest date the deferrals deposits can reasonably be segregated from general assets and then set up procedures to ensure deposits are made by that date.

9 Failure to make additional minimum contributions for top-heavy plans.

FIX: A plan is top-heavy when, as of the last day of the preceding plan year, the aggregate value of the plan accounts of key employees exceeds 60 percent of the aggregate value of the plan accounts for all employees under the plan. If a 401(k) plan is determined to be top-heavy, an employer contribution of up to three percent must be made on behalf of all non-key employees still employed on the last day of the plan year.

10 Improper hardship distributions.

FIX: Familiarize plan administrators with hardship provisions designed to help employees who are facing immediate or heavy financial need. Share information between plan administrators and payroll offices regarding hardship distributions that are made from the plan.

11 Failure to file in a timely fashion a Form 5500 (*Annual Return/Report of Employee Benefit Plan*) ERISA, and provide a Summary Annual Report (SAR) to all plan participants annually.

FIX: Never assume someone else is filing these forms. Each plan may have a number of individuals providing service to the plan, including the CPA, the TPA, benefits attorney, auditor, inside auditor, human resource employees, banker, and financial advisor. The plan administrator has the responsibility to ensure forms are properly filed.

If you make mistakes in the administration of your 401(k) plan, you can use the IRS's Employee Plans Compliance Resolution System (EPCRS) to remedy your mistakes and avoid the consequences of plan disqualification.

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For more ways to promote work/life benefits, go to www.familiesandwork.org and download *Making Work "Work": New Ideas*, under the tab Research & Publications, then Reports Available for Download.

Five Steps Toward HIPAA Compliance

Step 1. Undertake a thorough assessment of your company's level of information security.

Step 2. Design documents and implement policies, processes and solutions that ensure protection.

Step 3. Deploy appropriate technology security and services.

Step 4. Continually monitor activities to ensure ongoing compliance.

Step 5. Educate the organization on best practices.

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ered by HIPAA. Therefore, the individually identifiable health information collected by the doctor at the physical will be protected health information.

The employer wants the information, but because the use is not for treatment, payment or health care operations, the physician will have to obtain the patient's express authorization to release it. The employer may only use the information for the purposes expressly stated in the authorization. Other employment-related practices that may be affected include disease management and wellness programs, occupational health issues, and on-site medical clinics.

Here are some best practice tips for HIPAA compliance:

- Better to be safe than sorry. It's best to assume that all contacts with health care providers are covered by HIPAA regulations and a HIPAA authorization will be needed before information is released.
- Ask for or provide only the minimal amount of protected health information, even when authorization is provided. The burdens from HIPAA are minimal if PHI is not routinely obtained as part of the ongoing administration or oversight of a covered health plan.
- Don't use group health plan information to obtain evidence of disability on behalf of the employee unless the employee has provided a valid authorization.
- Ensure that an adequate "fire wall" as required by the regulations is in place, describing which employees have access to the PHI, restricting access to such individuals and for such use as is necessary for plan administration functions, and providing methods by which noncompliance can be resolved.
- Know your rights. HIPAA privacy regulations do not create the right to refuse to cooperate in legitimate requests for information.
- HIPAA makes employers liable for violations of their business associates if the employer is aware of the wrongdoing.

Best Practice Tips for HIPAA Compliance

Even companies that don't sponsor health plans have to comply with HIPAA regulations. Protecting health information can be tricky. Here are some best practices that will keep your company in compliance.

It's hard to believe twelve years have passed since the introduction of the Health Insurance Portability and Accountability Act, commonly known as HIPAA. Today many employers are still working to adhere to the regulations, which cover everything from plan portability to nondiscrimination, according to attorney Walter W. Miller.

But the centerpiece of HIPAA regulations has always been, and remains, maintaining privacy around the disclosure of private health information.

The fundamental premise of HIPAA is that individually identifiable health information created by or received from a covered entity (such as a health plan, healthcare clearing house, or healthcare provider) automatically becomes protected health information, or PHI. Once the information is protected, it can only be used for the purposes of patient treatment, payment of healthcare costs, and for health operations. The latter includes such common benefit plan functions as enrollment, eligibility determinations, claims determination, claims payment, pre-certification, and reviewing status of payment.

Even where use or disclosure of PHI is allowed under the privacy regulations, only the "minimum necessary" information required to accomplish the treatment, payment or healthcare operations can be used or disclosed. The regulations are fairly clear; employers are subject to specific and extensive regulatory burdens if they obtain and use protected health information to administer their own health plan or are involved in making or reviewing benefit decisions.

If you or your company needs protected health information for any other reason, it must come with a specific authorization from the employee or patient.

As a result, it's a rare regulated employer that is not affected in some way by HIPAA regulations. Additional rules specifically cover employers that self-insure a health plan, retain an employee acting as the health plan administrator or act as plan sponsors.

If your company sponsors a health plan, for example, obviously there will be times when you'll be required to use protected health information to manage the program. The privacy rules are intended to prevent the information from being used for employment-related functions or functions related to other employee benefit plans or other benefits provided by the plan sponsor. Under the rules, a plan sponsor must agree to use and disclose protected health information received from the health plan only for plan administrative functions, which must be specified in the plan documents.

Even companies that don't sponsor health plans are affected by HIPAA regulations. Take, for example, a company that requires a pre-employment physical. If the physical is being performed by a physician, other than an employee physician, most likely that the physician will be cov-

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Google Employees Don't Search for Snacks

Google does snacks, should you? The Internet business leader is a perennial favorite on those lists of "best businesses to work for." Here's an idea from the Google HR playbook. Snacks, and lots of them.

Google's philosophy is that no one should be more than 150 feet from food. While that may be a little extreme, it is certainly true that employees who are hungry are more focused on the clock for lunch or break time instead of their work. Coordinate snacks with a general wellness program, and only buy low-calorie, healthy food including fruit and juices. If you find that everything disappears as soon as you buy it, only restock once a week or every other week – employees will quickly learn that the supply is not unlimited.

Online Benefits Management

Should your company have an online benefits-management program? A study found that about one-third of employers offered an employee benefits portal or Web site, and another quarter of employers expected to do so over the next two years, according to an article published by Corporate Report Wisconsin. Smaller employers with fewer than 250 employers were nearly as likely to be seeking an online management tool for their benefits program as the larger companies were, according to Forrester Research.

Online benefits management often starts with a health insurance provider offering ways for employees to file claims and check their health insurance policies over the Internet. Then other aspects of HR are put online, including employee handbooks and retirement fund information.