COMMONWEALTH
PENSION
MANAGEMENT, LLC

Is Your 401(k) Plan More Risk than Reward?

Offering employees a 401(k) retirement plan is, after 35 years, still a distinctive benefit among privately-owned companies. As described by the US Department of Labor, "401(k) plans can be a powerful tool in promoting financial security in retirement. They are a valuable option for businesses considering a retirement plan, providing benefits to employees and their employers."[i]

According to a recent market study by Guardian Insurance & Annuity Co, more than 50 million Americans participate in employer-sponsored 401(k) plans, with about $3 trillion in assets. Ninety percent of all 401(k) plans are small businesses with less than $10 million in total plan assets and 80 percent of all 401(k) plans are in the micro market, with less than $2.5 million in assets.[ii] The Department of Labor expects the 401(k) market to rise to $4 trillion by 2015.

Your 401(k) plan helps you recruit and retain key employees. Contributions may grow through diversified investment choices helping employees achieve retirement readiness. And benefits can be portable helping both the employee and easing administrative liabilities for you.

No Good Deed Goes Unpunished

Unfortunately however, these upside opportunities from your 401(k) plan are matched by some inherent employer responsibilities and obligations that, if not managed appropriately, represent significant liability risk. The most basic responsibilities stem from employers with 401(k) plans being recognized as *fiduciaries* having a position of trust with respect to the participants and beneficiaries in the plan. As a fiduciary, your basic responsibilities include: 1) providing benefits to participants; 2) effectively managing plan costs; 3) standards of care and due diligence; 4) complying with all plan documents; and 5) assuring the proper diversification of plan assets.

One of the most significant downside risks you face as an employer is your potential liability for a breach of fiduciary duty. According to Ary Rosenbaum, Esq., a prominent ERISA (Employee Retirement Income Security Act) and retirement plan attorney with The Rosenbaum Law Firm in New York, research has shown that a large number of plan sponsors and plan trustees are unaware of all their fiduciary obligations and, therefore, are exposed to potential civil liability and even, personal liability. Employers may also be held liable if something happens to the money participants have in the plan.

Making matters even worse is the fact that fiduciaries may also be held liable for the actions and inactions of third parties like administrators, attorneys and advisors who are hired to perform specific support functions for the plan and its participants. This would include a wide range of outcomes attributable to incompetence, negligence or criminal activity. Therefore, it is prudent to implement a rigorous process of comparing alternative providers and selecting the best one at a reasonable cost.

Further, there are numerous employer responsibilities regarding plan investments. These involve investment selection, investment strategy, and periodic portfolio review. It is the fiduciary's responsibility for making certain that plan expenses are reasonable as determined by a comprehensive analysis of marketplace pricing.

Managing Reward and Risk

The good news in all of this, in addition to the value-added benefit to your employees is that the complexities of fiduciary responsible can be reduced to three basic categories: 1) Expenses; 2) Compliance; and 3) Retirement readiness. When addressed in this fashion, employer obligations can become clear, necessary actions can become apparent and potential liability exposure can become significantly lower.

The key is finding the right advisor who can cut through the legal and regulatory intricacies, identify and address the fundamental issues associated with being a fiduciary and provide you and your employees with a range of guidance for optimizing the value of your plan for all concerned.

Commonwealth Pension Management (CPM) is such an advisor. We work with individuals and organizations to provide guidance and the tools to develop, implement, and evaluate strategies that are intended to surpass your financial goals while helping to manage downside fiduciary risk. The CPM team are licensed and certified financial professionals who are experienced in effectively addressing the diverse and complex issues associated with being a 401(k) plan sponsor.

If you want to your employees and your company to derive the maximum value from your 401(k) plan by effectively addressing the associated responsibilities, please email or give us a call at (267) 794-3002.

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[i] http://www.dol.gov/ebsa/publications/401kplans.html
[ii] http://www.fa-mag.com/news/guardian--small-plan-401-k--market-presents-large-opportunity-for-advisors-14825.html

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