401(k) Plan Sponsors Sued

INSIGHTS

There has been a trend in recent years of lawsuits that specifically target companies' selection of their plan's investment options and their failure to actively monitor provider costs and investment expenses. **The typical complaint:** Plan participants have lost millions of dollars in retirement savings due to the plans' excessive administrative fees and expensive, under-performing investment options. Small and mid-market employers seeing the headlines may believe they are exempt from such litigation, since the most widely publicized lawsuits have typically targeted large, well-known companies. However, recently companies with as few as 100 plan participants have been targeted.

One recent lawsuit specifically names both the president and chief financial officer of a modest, but growing auto body repair business. They are being sued because they allegedly:

1. Selected high-cost investment options for their company sponsored 401(k) profit sharing plan when lower cost options were available for the same set of investments;
2. Selected investments that were unreasonably expensive relative to industry benchmarks and standards; and
3. Failed to actively monitor the fees and costs associated with their service provider.

The company's officers probably thought they had covered their bases. The company hired a nationally well-known brand 401(k) service provider, and may have thought that they could administer their plan without actively reviewing the decisions the service provider made.

Unfortunately for them, they had a fiduciary responsibility to their plan's participants under the Employer Retirement Income Security Act of 1974 (ERISA) to ensure that the plan offered reasonably priced investment options and that the fees paid by the plan to service providers were also reasonable.

IMPLICATIONS

The recent prevalence of such lawsuits should put all businesses on notice that they cannot simply hire a well-known vendor to provide them with a general investment line-up of actively managed mutual fund investments. If you maintain a 401(k) profit sharing plan, you should:

1. Routinely investigate lower cost alternatives in the market for both service providers and investment options;
2. Require that your service providers demonstrate a prudent process for the selection and monitoring of plan investments; and
3. Be sure that your service providers or advisors are offering only the lowest cost share classes of all investments offered.

It is incumbent upon plan sponsors to do their due diligence in selecting and regularly monitoring service providers and advisors. The cost of failing to do so can be far greater than simply the loss of retirement income.

About Our Firm

CherryBekaert Benefits Consulting provides retirement plan recordkeeping, administration, plan design and fiduciary investment advisory services to plan sponsors nationwide. Our clients have access to the lowest cost share classes of many mutual funds on a true open architecture investment platform. For further information or for a complimentary analysis of your plan's investment costs, please call Retirement Plan Services at (516) 750-7575.