BELTZ IANNI & ASSOCIATES

RETIREMENT TIMES

NEWS AND UPDATES FOR RETIREMENT PLAN SPONSORS AND FIDUCIARIES

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Tips for Preventing Uncashed Retirement Checks

Managing uncashed retirement checks may be considered a nuisance by plan administrators. Nevertheless, the employer still has fiduciary responsibility when a former employee fails to cash their distribution. Search efforts to locate a missing plan participant consume time and money and may fail to locate the participant. Likewise, going through the process of turning over dormant accounts to the state can also consume time and resources.

Decrease the burden of uncashed checks by:

1. Discussing with terminating employees during the exit interview the options for their retirement plan. Employees may forget they have a company-sponsored retirement plan, or don't know how to manage it.

2. Reminding departing employees that they can roll over their retirement assets into their new employer's plan. Your plan's service provider or the new employer can answer questions the former employee may have about the rollover process.

3. Letting employees with an account balance of $1,000 or less know they should expect to receive a check in the mail after a certain amount of time.

4. Having the employee verify their current address to where the check can be sent.

Remember, fiduciary responsibility and liability extends to terminated employees with assets in the plan. This responsibility includes delivery of all required distributions and all fiduciary prudence responsibilities. Stay in touch with this important group.

If you've misplaced your former employees, the IRS offers some guidance on locating them. Visit **https://www.irs.gov/retirement-plans/missing-participants-or-beneficiaries** for more information from the IRS and The Department of Labor on methods for locating the missing.

Is Your Plan Document Up To Snuff?

Bob Judd, CPFA, Partner, Beltz Ianni & Associates, LLC

Most plan sponsors today use a prototype plan document that is provided by their record-keeper or third party administrator ("TPA"). Typically the prototype document come in two parts: the base document which contains the standard language for the plan that cannot be changed and the adoption agreement that allows for the many provisions that can be elected to customize the plan to suit each employer's needs.

When plan sponsors amend their plan, a proper amendment must be made with the necessary employer signatures and board resolutions. Also, all prototype plan documents must be amended and restated every six years. This process was put in place to ensure that all plans are updated for any legislative changes that take place between the restatement periods. Not properly amending and restating the documents as required can result in plan disqualification.

We often find issues with plan documents due to a lack of understanding of the rules, poor process and documentation procedures, or documents completed incorrectly with regard to how the plan is actually operating.

How does this happen? One common problem is that the document or future amendment is never signed or no one has a copy of the signed document or amendment. The employer thinks the record-keeper or TPA has it and the record-keeper or TPA thinks the employer has it. Typically this results from the record-keeper or TPA emailing the document to the employer for signature, and it gets lost in the shuffle and never gets signed. Unfortunately, there is little follow up to make sure this task has been completed.

Another major issue is the adoption agreement does not properly reflect how the plan is operating. This is often the case with the definition of compensation chosen or the matching contribution formula. Without a thorough review of how the plan is set up on the recordkeeping system and how contributions are determined on the payroll system, you run the risk of there being discrepancies that can lead to big problems in an audit. Not following the plan document is a major audit concern and can cost big money if it turns out you were making contributions incorrectly or otherwise not operating the plan according to the plan document. Other areas of concern are vesting schedules, eligibility calculations, loan procedures and distributions.

Be particularly alert to this issue when changing record-keepers during the document "mapping" process. Often providers map over provisions without a complete understanding of how the plan is actually operating or intends to operate going forward.

Everyone has some level of concern and awareness regarding being sued for poor investment performance or investment oversight. The reality is that far more employers have had to pay fines and restitution to the plan over the administrative aspect of the plan. The plan document is the governing instrument. Good process, a fiduciary file, and competent handling of plan documents, amendments and restatements will help you avoid these pitfalls.

Hey Joel! – *Answers from a recovering former practicing ERISA attorney*

Welcome to *Hey Joel*! This forum answers plan sponsor questions by a former practicing ERISA attorney.

Hey Joel,

When does the five-year clock start for Roth withdrawls?

- *Tick Tock in Tennessee*

Dear Tick,

For most investors, it's important to know that there is a five-year waiting period for tax-free withdrawals of earnings, and it is applied differently, depending on if you made Roth IRA contributions, converted a traditional IRA to a Roth, rolled over Roth 401(k) assets or inherited the Roth account.

The five-year clock starts with your first contribution to any Roth IRA—not necessarily the one from which you are withdrawing funds. The clock rule also applies to conversions from a traditional IRA to a Roth IRA. (Rollovers from one Roth IRA to another do not reset the five-year clock.) Once you satisfy the five-year requirement for a single Roth IRA, you're done. Any subsequent Roth IRA is considered held for five years.

If you have a Roth 401(k), those have their own clock (Treasury Regulation 1.402A-1, Q&A-4(b)). If you open a new 401(k) with a new employer, that Roth 401(k) has its own clock. If you move an older 401(k) to a newer 401(k) with a new employer, the old clock is the one that counts. In other words, I would keep the Roth money from a 401(k) plan separate from other ROTH IRAs to avoid issues over whether the five-year clock has expired.

The Count,

Joel Shapiro

About Joel Shapiro, JD, LLM

As a former practicing ERISA attorney Joel works to ensure that plan sponsors stay fully informed on all legislative and regulatory matters. Joel earned his Bachelor of Arts from Tufts University and his Juris Doctor from Washington College of Law at the American University.