

the dana report

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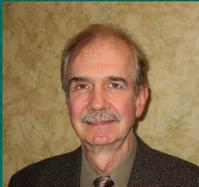
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ABOUT THE FIRMS



Dana Consulting Group, Ltd. and Jennings Law Firm, Ltd. were established to provide employers with a single source of comprehensive legal and consulting services relating to retirement plan and employee benefit matters.

If you know someone who would like to receive *the dana report*, click the link below.



PLAN DESIGN AND PARTICIPANT BEHAVIOR HELP FUEL RECORD 401(K) GROWTH

A recent survey by a large fund company shows dramatic - and ongoing - growth in 401(k) accounts. During the 2019 4th quarter, the survey showed employees' savings rate reached a record 8.9% of wages, while the total savings rate (including employer matching contributions) reached 13.5%. Looking at the group of employees with ten or more years of participation, the average account balance reached \$328,200.

So what is accounting for this ongoing improvement in retirement savings? Auto enroll continues to be a growing reason. 35% of employers are using it and 90% of enrolled employees do not opt out. Employee education is another important reason. Survey and after survey shows Americans view saving through their company's 401(k) plan as the most effective way to save and for a large number of employees it is the only access they have to experienced financial assistance.

The survey also showed that the average number of investment options continues to trend down. Using the "less is more" approach, large corporate 401(k) plans now offer about 16 funds, as compared to 17 in 2014 and 30 in 2009.



QUESTIONS TO ASK BEFORE JOINING A MEP

As many of our readers know, the SECURE Act is now law. We have prepared a firm memorandum available on our website under the Education Center tab summarizing many of the important changes affecting retirement plans and saving. One of the changes relates to multiple employer plans (called MEPS).

The SECURE Act wants to make MEPS more attractive to small businesses who do not offer a retirement plan and, hopefully, bring more non-covered workers into a qualified plan. We are posting to our website under the Advisor Services tab an article by Fiduciary News (a publication tracking retirement plans and related fiduciary issues) that professionals who advise their business clients on these kinds of matters should read. The government wants more workers covered by a retirement plan and there are several approaches being used. [Illinois employers who do not sponsor a plan are subject to the Illinois Secure Choice Savings Plan. Call us if you are unfamiliar with that.]

MEPs are promoted as having several advantages over plans set up by an employer itself. MEPS are no panacea and, unfortunately, the people promoting MEPs either minimize the disadvantages or just plain mislead. For example, one advantage is that employers reduce their fiduciary duty. Theoretically yes, but in practice not as much as you would be lead to believe. Lower fees are another perceived advantage. Maybe yes or no. We have taken over several plans from payroll companies and in several cases, the payroll company refused to really disclose all of the fees. Moreover, the employer has significant duties regarding the accuracy of the data. For example, a daughter of the owner is on the payroll but the payroll does not know she is the daughter. She is an HCE but the payroll company does not know that. As a result the discrimination testing is wrong. Read the service agreement with the payroll company and identifying HCEs is not their responsibility. Owners who are self-employed do not get W-2 wages and the payroll company does not know about partnership profits that are considered compensation. As a result contributions cannot be made for owners based on these additional profits and the owners are getting less than they are entitled to.



THE TRUTH ABOUT INVESTMENT POLICY STATEMENTS

We thought a good way to start the New Year would be to revisit once again the subject of investment policy statements (IPSs). We have expressed our view on this many times in the dana report but we still get questions about the advisability of having one. Here are some of our thoughts:

- IPSs are a prudent thing to have. However, not having one does NOT mean you are being imprudent. As we have said many, many times: not having one is infinitely better than having one you do not follow.
- Downloading an IPS off the internet is the likely the equivalent of not having one at all. A good IPS outlines in detail how you intend to administer the assets of the plan. An IPS that simply says "We will act prudently" is pretty much worthless (to your author anyway).
- In our experience a good IPS is drafted by the plan's financial advisor, not by the plan's attorney. The attorney should certainly fill in some blanks but the attorney is NOT the financial expert assisting the trustees manage the plan's assets. The attorney is NOT the plan's financial advisor - and should not be for other reasons.

Too many IPSs we have reviewed want to give the trustees a lot of "wiggle room." That is fine but may undermine the purpose of having it. The purpose of the IPS is to create a process. An IPS that says we will do whatever we want based on circumstances is not really a process.



PRINCIPAL FINANCIAL GROUP BACK IN COURT OVER PROPRIETARY FUNDS

The Court of Appeals for the Eighth Circuit has revived a class action lawsuit over its administration of a 401(k) plan using Principal's proprietary funds. The fund at issue is Principal's Fixed Income Fund. Principal controls the fixed income rate and notifies plans in the fund a month in advance of any change to the rate. 401(k) plans can reject the new rate but that requires the plan to withdraw from the fund and either pay a 5% surrender charge or wait 12 months before withdrawing. The lawsuit is over whether Principal is a fiduciary since it exercises control over plan assets.

Our Comment: This lawsuit once again raises the question of using proprietary funds in 401(k) plans. If the fund company is making higher profits using its own funds in a retirement plan, is the fund company an ERISA fiduciary? If it is, the fund company has a direct conflict between its own self-interest and plan participants. Many of these 401(k) plans are what is called "fully bundled", which means the fund company is overseeing investments and plan administration. If there is no advisor on the plan, who is monitoring the fund company's investment choices? Can the fund company be relied on to monitor itself and its funds? We have long advocated that 401(k) plans, particularly those in the small plan market, need an independent financial advisor with the expertise and experience to be "watching the hen house."



WHY YOUR 401(K) PLAN NEEDS A FINANCIAL ADVISOR

We have long been a strong advocate of hiring an experienced financial advisor to manage a company's 401(k) plan. Various surveys of Millennials show as a group they are extremely pessimistic of the future. One commentator surveyed tweets.

- Why save for retirement? One tweet said "By the time I'd be retiring, we may all be dead anyway."
- Another said "Work yourself to death and you won't have to worry about retirement."

Some of this may be tongue in cheek but 72% of surveyed Millennials reported their "emotional wellbeing" was being adversely impacted by climate change.

Our Comment: People need advice handling their financial affairs, particularly their retirement savings. If the 401(k) plan sponsor does not provide it, people will get it somewhere else. The SEC recently fined a baggage handler at a major airline for providing unauthorized investment advice to his colleagues. The baggage handler charged a \$300 annual fee to manage his colleagues 401(k) accounts. What is shocking is that his "clients" were happy to get the assistance.

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