

# The ERISA Attorney Who Speaks English, Not ERISAese

## By Ary Rosenbaum, Esq.

I jokingly say that there are two ERISA attorneys; the one who speaks English and the one who speaks ERISAese.

I am an ERISA attorney who speaks English. What is ERISA? The Employee Retirement Income Security Act of 1974, which along with the Internal Revenue Code governs retirement plans. So in English, I work on retirement plans. I do not handle plan investments nor do I record keep plans, my interest lies in protecting the tax qualification of the Plan, as well as limiting the liability of the Company sponsoring the Plan and the personal liability of those who are serving as the trustees of the Plan (often the owners of that Company).

I draft plan documents, amendments, mergers, and terminations. I handle DOL and IRS audits when a Company has been randomly targeted for a retirement plan review by the government or when they have made an error that needs to be corrected. I also make sure that the employer knows the true cost of Plan administration and that they have an investment professional to review their investments and educate their employees.

### **My Story and I'm Sticking To It**

I have been an ERISA attorney for more than 12 years and nine years were spent working for third party administration (TPA) firms that handled hundreds of daily valued 401(k) plans. I saw the abuses of the 401(k) business, namely hidden fees and poor administration first hand. I left my position as Director of ERISA Legal Services at a New York TPA because I was uncom-

fortable with their business practices in hiding revenue sharing payments and an improper relationship with a CPA audit firm that they were referring their larger clients for an "independent" retirement plan audit. Three years later, that TPA firm is currently under Department of Labor civil and criminal investigation for these same issues.



After the leaving the TPA world, I joined a well respected Long Island law firm and started representing small to medium size plan sponsors to avoid many of the problems that I saw firsthand while working at a TPA. This past April, I started my own Firm, so I can properly communicate

my services to plan sponsors around this country.

For example, I represent a New York law firm. Through my review, I determined that the TPA was over charging the client by \$3,000 because they were taking revenue sharing payments from mutual fund companies that were earmarked to offsetting administration fees and putting the money in their pockets instead.

After firing this administrator, the new administrator determined that the Plan's testing was negligently done by the prior administrator two years earlier, requiring our client to make a \$27,000 corrective contribution to the employees. Through my work, our client received a \$7,500 settlement from the prior administrator for their negligent work.

I have developed a reputation as working efficiently, and professionally with the ability to break down difficult topics and explain them to clients in a language that they can understand. As I stated earlier, I am an ERISA attorney who speaks English. I have done a lot of work with retirement plan advisors around the country because my work for their clients adds a value to the financial advisor's services

at no cost to them because it helps educate financial advisors on some of the administrative issues that plague retirement plans.

### **The Flat Fee Society**

Except for an Internal Revenue Service or Department of Labor investigation, I

bill on a flat fee basis which my clients love and the managing partner of my old law firm, not so much.

When I take my dress shirts into the dry cleaner, I get a claim ticket that tells me the cost. My local pizzeria has a menu with set prices. My local supermarket places the prices of their items on signs and shelves around the store. Yet most law firms still cling to charging their client by the billable hour with no set price on their list of services.

In uncertain times, local businesses need cost certainty. Small and medium size businesses have to watch every nickel and dime. That is why law firms need to get with the times and start charging their clients on a flat fee and cost certainty basis. I have been drafting retirement plan documents for 12 years and I think I may be at a point that I could do draft them in my sleep (only kidding!), so I realize how much time it takes and what is a reasonable cost to compensate my time.

So my clients appreciate when I give them a flat fee, as opposed to another law firm who will bill on an hourly rate plus also charging for such out of pocket items such as copies, binding, and postage. From experience, clients would enjoy paying a flat fee with cost certainty, rather than a law firm that has a billable hour with no end to the fee in plain sight. I am convinced that clients would rather pay a flat fee, than a fee tied to a billable hour which requires the attorney to charge a client for every phone call or every copy.

I will never charge a client for a phone call or to have lunch because I believe when it comes to a client, relationships mean everything. I don't believe an attorney-client relationship will last long if the client feels they are being nickled and dimed by their attorney.

By charging a fee tied to a billable hour, I believe encourages law firm to overbill their clients on such important services as

client research. A flat fee encourages time efficiency for the attorney since there is no room for overbilling.

To understand my fee, my old TPA charges up to \$3,250 for a new plan document. I use the very same document and charge \$2,000. They charge \$600 for a plan amendment, I charge \$300. People may say I under bill, I say I am providing a valuable service to my clients that provides a value at a cost effective price that they understand.



### **Why Hire an Independent ERISA Attorney**

Did you know that even if you offer a 401(k) plan and allow your employees to choose their own investments, you can be sued if you didn't educate them on the investments offered in the Plan? Did you know you could also get sued for not knowing the full cost of your Plan's administration? So many companies swear they are paying nothing for administration, sadly not knowing that the Plan's investments have wrap fees that are embedded fees to pay for administration that there are not aware of.

While many Plan sponsors use their TPA's legal department for plan documents, there is no attorney-client relationship since only a law firm could offer that. In most cases, my fees are as much, if not lower than some of these TPA's legal departments, with the added benefit that I represent you in trying to minimize

the cost of plan administration and your potential liability. As your ERISA counsel, I am legally responsible to look after your interest; the legal department of your administration firm is not. So who is on your side?

If you sponsor a retirement plan, you should annually review your plan structure, cost, and investments to minimize liability. In order to alleviate this requirement, I am now offering a Retirement Plan Tune-Up which is a legal review of a Plan's documents, cost, administration, and investments, all for a flat fee of \$750. This Review in the past has targeted potential plan pitfalls for increased liability, unnecessary plan costs, and cost effective plan structure changes.

With a penchant for flat fee billing and a proven track record of working efficiently that has helped plan sponsors across the country in limiting their liability and cutting down their administrative cost at a cost effective price, I jokingly proclaim that I am the most dangerous

ERISA attorney in the country.

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