# You're Thinking of Using Your Payroll Provider as Your 401(k) TPA and This is Why You Shouldn't

By Ary Rosenbaum, Esq.

The reason you are reading this article is because you have considered using your payroll provider to serve as your 401(k) plan's third party administrator (TPA). This article is going to show you why this is a bad idea.

## Payroll has little to do with 401(k) plans

The payroll provider will tell you that it's important to have payroll and 401(k) administration under one roof. However, 401(k) plan administration has very little to do with payroll. Other than salary deferrals and W-2 compensation, 401(k) plan administration has nothing to do with payroll.

## Payroll integration isn't very unique

Your payroll provider will tell you how important it is to have payroll integration with your 401(k) plan, so that's their big selling point. If having payroll integration is so important for 401(k) administration, why do the payroll providers offer payroll integration with other TPAs and other 401(k) platforms? If payroll integration is so important, why would they let something so proprietary and so valuable be offered to the competition? Because it isn't.

## Payroll provider TPAs have a high client turnover rate

The two largest payroll providers are also two of the largest 401(k) TPAs. However, they also have a huge churn rate, a high turnover rate among their 401(k) plan sponsor clients, which means there is a huge dissatisfaction among plan sponsors. Plan provider TPA clients apparently aren't long-term payroll provider TPA clients.

## Competence of your TPA is more important than anything else

While it seems like a good idea to save a couple of dollars and have your payroll provider serve as your TPA, it isn't. Payroll provider TPAs make too many errors in day-to-day administration, which makes 401(k) plan sponsors liable because as plan fiduciaries, they hired the payroll provider and they are on the hook for liability.

## Payroll provider TPAs won't hold your hand

A good TPA will help plan sponsors fill out the requested employee census and information for the TPA to conduct correct compliance testing. Payroll provider TPAs won't give you that help; they expect you to be retirement plan experts (which you're not). It's this lack of hand holding that leads to many compliance-testing issues.

## They never seem to have one person to talk to

Unless you're a larger plan, payroll provider TPAs don't assign one person as your contact for plan needs. If you have an issue, it may force you to track down 2-5 people in order to get your answer. You have enough on your plate; you have no time to chase several people to help you.

## TPA payroll providers aren't experts in plan design

If you're a business that can afford to give employer contributions or you have had plan testing issues, the payroll provider TPAs are not a good fit. Payroll provider TPAs don't understand the fundamentals of plan design, so they can't offer plan designs that can augment contributions to your highly compensated employees. Their plain vanilla idea of 401(k) plan design can cost you money if it's not the most inefficient plan design available. If you're failing compliance testing, they offer little help in trying to fix that problem.

## They may offer fund lineups, but payroll provider TPAs are not fiduciaries and do not give investment advice

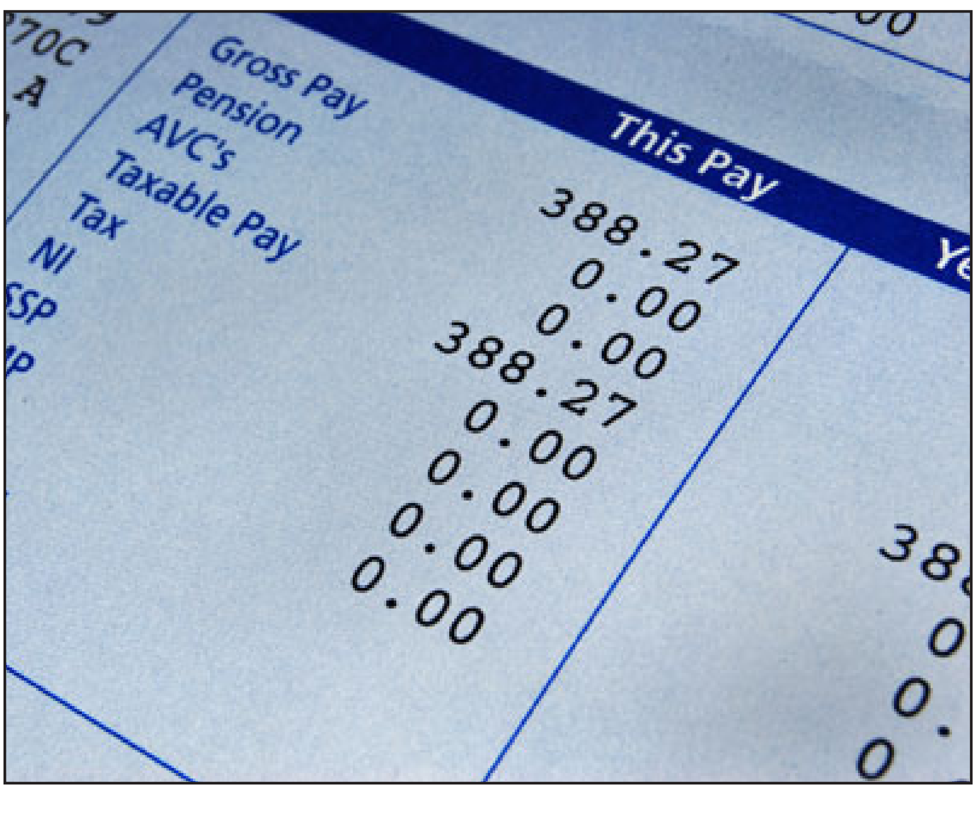
If you don't have a financial advisor, payroll provider TPAs are more than happy to offer a choice of investment options on their mutual fund menus that they offer to their clients. However, they are not fiduciaries and so they are not liable for any losses suffered by plan participants nor are they responsible for picking mutual funds that pay a lot of revenue sharing back to themselves. Even if they trot out one of their financial representatives to a meeting, they are not considered as giving investment advice, they are not a fiduciary, and so they are not legally culpable for their fund lineup suggestions.

## We make good business correcting payroll provider TPA errors

ERISA attorneys such as myself as well as TPAs have a huge burgeoning industry by correcting plan errors from former payroll provider TPA clients. It's the gift that keeps on giving and it pays our mortgages.

## Your payroll provider salesperson gets a bonus if you change TPAs and then disappears

Your payroll provider salesperson gets a bonus if you become a TPA client, as long as you last 6 months as a TPA client. After 6 months, they no longer get paid for your plan. That's when you usually discover making the switch was a bad idea and you never hear from that payroll provider representative again. They won't care if you fire the payroll provider as the TPA, as long as you do it after 6 months.

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