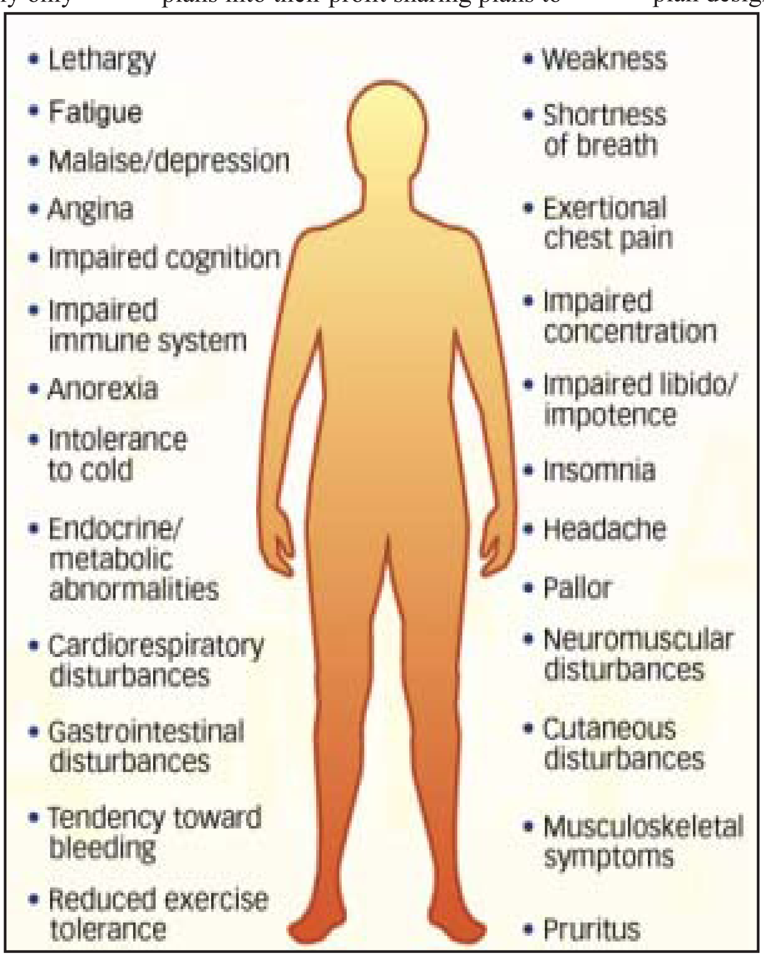
Symptoms That Your Retirement Plan Might Be In Trouble

By Ary Rosenbaum, Esq.

The most important thing is your health and there are times where symptoms you have can detect a greater threat to your health. You can either take care of your symptoms or you can ignore it and experience that greater harm further down the line. There are too many people who die needlessly only because they didn't treat the health problem when first detected. When it comes to being a retirement plan sponsor, there are issues that are symptoms of a greater harm. If you nip things in the bud, you can avoid liability later. So this article is about symptoms that can detect whether your plan may be suffering from a larger problem that can increase your potential liability as a plan sponsor.



1. A plan where the third party administrator (TPA) is not fully transparent on fees, especially when it comes to indirect payments they receive, such as revenue sharing payments from mutual funds.

Even with fee disclosures required these days, there are TPAs out there that still aren't fully clear in all their fees. Some TPAs invent fees like inflated custody charges or offer confusing jargon that makes reading those disclosures difficult. Fee disclosures don't have to read like a legal treatise. A TPA offering confusing disclosures can be a sign that the fees you are paying may not be so reasonable.

2. A company that has a profit sharing and money purchase plan that covers the same group of employees.

Many plan sponsors had paired plans, a money purchase plan combined with a profit sharing plan (whether it is a 401(k) plan or not) because of deductibility limits placed on profit sharing plan contributions. The limit changed in 2002, so most plan sponsors merged their money purchase plans into their profit sharing plans to save on administrative expenses because the need for two plans was pretty much eliminated when the limit on profit sharing contribution deductions was lifted from 15% to 25% (to finally be on par with money purchase plans).

3. A plan that has consistently failed their discrimination testing, whether it's the tests for salary deferrals, top heavy, match or 410(b) participation.

If a plan is consistently failing its discrimination tests, it is certainly a sign of a problem. While failed discrimination tests need to be remedied, there are many plan designs such as a safe harbor plan 401(k) plan design that can help avoid these types of failures and save plan sponsors some money and some headaches. There are too many plans failing discrimination tests with TPAs who did not have the foresight to suggest what type of corrective plan designs can be used.

4. An undefunded defined benefit plan..

With a falling stock market, a defined benefit plan that is underfunded in its obligations to participants at normal retirement age will be more underfunded. Any plan that is underfunded, whether the plan has frozen its accrual of benefits (contributions for current service) or not should have s study to determine what can be done, whether it is to freeze contributions, change its investment strategy, or engineer an exit plan to terminate the plan over a seven year period (or less).

5. A defined benefit plan for a company that has increased their workforce.

Any plan sponsor with a defined benefit plan with an expanding workforce should sit down with their TPA and accountant to determine whether they can still afford the plan as more employees mean more required contributions.

6. Any plan with no financial advisor.

Every retirement plan that has employee participants needs a financial advisor to help develop an investment policy statement, help chose and replace investments, as well as offering investment education. A TPA who assists in fund menu selection and takes on no fiduciary role is not a financial advisor. Neither is your payroll provider that serves as a TPA with suggested fund lineups.

7. A money purchase plan that is covering non-collectively bargained employees.

Just like #2, money purchase plans for non-collectively bargained employees should go the way of Betamax or bell-bottoms. Unless contractually required, a money purchase plan should be converted into a profit sharing plan.

8. Any 401(k) plan that has not reviewed their contract with their insurance company provider in the last 5 years.

Plans should always review their contracts with a plan provider that is an insurance company. Perhaps the provider has a better program or pricing based on the plan's size or economies of scale or perhaps a plan is better going the fully unbundled route. Only in reviewing a contract can a plan sponsor possibly know they might be paying too much in fees.

9. Any plan without an investment policy statement (IPS).

Any retirement plan whether investments are participant directed or not must have an IPS that dictates what criteria was used in how investment options were selected as well as when they are replaced. Outside of a plan document, it is probably the most important document a plan sponsor needs to have to protect against fiduciary liability. A plan without an IPS is a plan asking for a lawsuit.

10. Any plan that has not reviewed their choice of investments in the last year.

It is not enough that a retirement plan has an IPS. In order to manage the fiduciary process and minimize liability, the plan sponsor and trustees must review their investment options on a semi-annual or annual basis and determine whether they still meet the criteria set forth by the IPS.

11. Any plan that has not seen their financial advisor in the last year.

Having a financial advisor that is invisible and is not meeting the fiduciaries on a consistent quarterly, semi-annual, or annual basis is the same as not having one (see #6 above).

12. A participant directed retirement plan that offers no education to plan participants.

If a plan is participant directed, plan participants should be provided education because under ERISA 404(c), plan participants must be provided or have the opportunity to obtain sufficient investment information regarding the investment options available under the plan in order to make informed investment decisions. A plan that offers no education to participants risks some liability from financially uninformed plan participants.

13. Any plan without an ERISA bond and/or fiduciary liability insurance.

Generally, every retirement plan needs an ERISA bond to protect plan assets from theft. In addition, any plan with employees as plan participants should purchase fiduciary liability insurance to protect plan sponsors and fiduciaries to protect against any liability lawsuits from plan participants.

14. A 401(k) plan with low participation or low average account balance per participant.

These may be the result of the employee population and the type of employees the plan covers. It also may be explained by something less innocuous like poor investment education or lack of enrollment meetings. Regardless, it should be reviewed.

15. Any plan that has not been updated in the last 2-3 years.

Whether it is a plan amendment or a review of its fees or administration, it is imperative that plans be reviewed on a 2-3 years basis (annually is preferred) to make sure that the plan still meets the needs of the plan sponsor and that there are no glaring administrative issues such as out of date plan documents or recordkeeping errors.

I know a good ERISA attorney who can do a full plan review called a Retirement Plan Tune-Up for $750 (really cheap plug here).

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