

BENEFITS LAW JOURNAL

From the Editor

While You Were Sleeping...PPA, Auto Enrollment, and QDIA

As a Benefits Law Journal exclusive, the following is the federal government's secret notice to plan participants covering the new PPA 401(k) automatic enrollment and qualified default investment alternative rule.:

Dear Employee:

Our records show that you haven't been paying much attention to your long-term financial future. Did you know (we sent you a notice) that our company's pension plan was frozen last year? Our Board of Directors couldn't deal anymore with the vagaries of the investment markets, low interest rates, and ever-changing accounting, funding, and tax rules. That means it's now up to you to start planning for your retirement. And it appears that you have not done a thing.

Although our company has long offered a 401(k) plan with a 50-cents-on-the-dollar employer match, you've never contributed a single penny. Our HR department and our 401(k) vendor have sent you multiple colorful brochures about the plan that is already set up for your benefit. Did you notice all those smiling faces? Okay, they're models, but they're meant to represent the "smart money"—people who, unlike you, are actively saving toward their retirement. No cat food for them. These are the same people who checked out the plan's Web site and took advantage of all the free investment planning seminars we've offered. (Where did you think all those doughnuts and squeeze balls came from?)

If you had taken a peek at any of this information, you'd know that, at best, Social Security will cover 30 to 40 percent of your retirement needs. You would also know that if you live to age 65, you have a reasonably good chance of making it to 90. Generally speaking, longevity is good news. But life is expensive. Inflation, even when it is low, makes life more expensive. Thirty-five years of having to rely on a Social Security check for all your needs (remember?—no company pension) could prove very stressful.

Our lawyers tell us that employer retirement plans are voluntary. That means that if you don't have enough money when you retire, legally speaking, it is strictly your problem. But we happen to like our employees. They mostly work hard and do their best, and when they retire, we want them to be like the smiling people in the brochures. So we maintain a 401(k) plan. It may not seem as good or as easy as the old pension plan (from your perspective, not ours), but by contributing regularly and making sound investment choices, you'd have a reasonably good chance of a financially comfortable retirement. But since you haven't done a thing, your prospects are rather grim.

So, we have decided to take charge of your retirement for you. We'll start by withholding 3 percent from every paycheck and putting it straight into your 401(k) plan account. Next year, it will increase to a 4 percent contribution, the year after that to 5 percent, and finally to 6 percent. And we'll match your contributions. Plus you still get the regular company profit sharing contribution that even you have been receiving since we froze the pension plan. All this money is yours to keep, since you've been our employee long enough to be 100 percent vested.

However, it's still your paycheck we are withholding from, and we're legally required to mention that you can call a toll-free number and arrange to contribute more (as if!), less, or nothing at all to your 401(k). However, given that you have ignored every brochure, meeting, seminar, and other enticement, you'll probably ignore this letter too—which is just as well, since if you were still reading at this point, you would probably be calling to cancel your contribution. Lucky for you, if you're not paying attention.

Wait—there's more we need to say. Your contributions have to be invested. We offer many diversified, low-cost investment funds. We pay a consultant to continuously review these funds. We made it possible for you to direct your plan investments on the Web or by simply calling the same toll-free phone number. You also can take advantage of a heap of free investment education, 24/7. Our lawyers tell us that by doing all this, we are pretty much off the hook if you make a dumb investment choice. But you haven't even

picked an investment (are we responsible because you are asleep?), so we have been “defaulting” you into the plan’s stable value fund. This is a rock-solid fund that is pretty much ensured not to go down in value. Unfortunately, it’s unlikely to go *up* much, either. Basically, it will grow just enough to keep up with inflation, plus a little bit extra.

Lately, our investment consultants, lawyers, and even the US government have been saying that a stable value fund is too conservative for someone like you, who doesn’t pay attention. So from now on, all of your contributions will be invested in the plan’s new default vehicle, a life cycle fund. It works like this. We have picked a fund family and told them that you expect to retire when you’re age 65. (Too old, you say? Have you looked at your 401(k) balance lately?) The fund company’s investment advisors then decide how aggressive an investor you should be and divide your account among stocks—growth, value, large cap, small cap, established and emerging international markets, and fixed income—bonds and other IOUs, and maybe some real estate and “alternative strategies” (that’s a fancy term for other stuff). As you get older, the fund advisors will gradually move your savings into more conservative investments—basically, more bonds and fewer stocks.

Unfortunately, these advisors don’t really know all that much about you except your age. You could have visited our plan’s Web site and provided details about your long-term goals and needs and have an expert tailor your investments more closely. But, again, you haven’t been paying attention. Not to worry too much—our experts say the default fund should do the trick: Investment professionals say that over a period of 40 years, any 40 years, a diversified mix of stocks and bonds has always been a good investment—at least in the United States. (The folks in Europe and Japan haven’t always been as fortunate.) We are hopeful that past performance will be indicative of future performance; that the investment advisor picks good investments; and that you can wait 40 years before tapping your retirement fund. But from our viewpoint, once again, our lawyers assure us that as long as we were reasonable in picking the fund family and write you annually about what we are doing with your money, our company will have no legal responsibility if something goes wrong with your investments.

If you are lucky, you’ll never open this letter, or any of the other mailings that the government requires that we send periodically. That way, you’ll never wreck your financial future by stopping your contributions, taking a plan loan or hardship withdrawal (what are those? Don’t ask!), or deciding that you know how to time the stock market, until you wake up on your 65th birthday and discover, if everything

goes according to plan, that you are in possession of a big, fat 401(k) nest egg. When that time comes, we'll talk about annuities. Or maybe not. If you're still not paying attention, maybe we'll just use your account to buy you an annuity.

Good night.
Sincerely yours,
HR & Benefits

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