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# the dana report

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## ABOUT THE FIRMS

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

## QUOTES

"They cannot take away our self-respect if we do not give it to them."

– Mahatma Gandhi

"The best thing about the future is that it only comes one day at a time."

– Abraham Lincoln

"Kind words do not cost much. Yet they accomplish much."

– Blaise Pascal

### Route To:

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## Planning Now For 2009

Ideas to be thinking about as we approach 2009:

1. New Comparability (or Cross-Testing). Under IRS guidelines your plan must be amended by December 31, 2008 if you wish to change your allocation formula to a New Comparability approach. Please contact our office for additional information about this approach, which can significantly increase the amount of contributions allocated to the owner and other key employees.
2. Safe harbor contribution or Qualified Automatic Contribution Arrangement (QACA). Adding a safe harbor or QACA to your plan will eliminate that nasty ADP Test that now applies to your 401(k) contributions. See [www.danaconsulting.com](http://www.danaconsulting.com), under Education Center for firm memorandum on Safe Harbor Plans and Automatic Enrollment.
3. Defined benefit or cash balance plans. These plans are not subject to the regular \$46,000 contribution limit that applies to 401(k) plans (and other defined contribution plans). For profitable businesses, these plans offer owners and key employees the opportunity to receive substantially higher contributions. A new plan would need to be adopted by December 31, 2008 to be effective in 2008. Please see our website for a firm memorandum on these plans. ■

## 401(k) Contribution Form Updated for 2009 Limits

The IRS recently announced higher 401(k) contribution limits for 2009: \$16,500 regular limit and \$5,500 catch-up contribution limit. We have updated our 401(k) contribution form for 2009 to reflect the new contribution limits. You may download the new form from our website under

Client Services. You can insert your plan's name on the top of the form and save it to your own computer. ■

## Market Turbulence and Retirement Plans

Market turbulence has had a significant impact on retirement plans and the full extent has likely not been felt yet. Some things to be thinking about now include:

- Financial experts agree that now is not the time to stop making 401(k) contributions. Perhaps a change in investments may be warranted but that should not include stopping contributions.
- Americans may need to be increasing their 401(k) contributions to build up their accounts going forward.
- Defined benefit plan sponsors may wish to consider "freezing" their plans in 2009 to provide a time-frame to evaluate the plan's funding status and how long it may take to make up any funding shortfalls.
- Plan designs that are based on significant annual employer contributions may need to be re-evaluated if economic conditions affecting the employer require a significant reduction in employer contributions.

Illustration: One of our clients who expects a very challenging 2009 business environment switched from a regular 3% safe harbor election to a conditional safe harbor election and will eliminate 401(k) contributions by key employees next year. This will enable the company to avoid committing to any employer contribution until its 2009 economic situation becomes clearer. NOTE: Some changes for 2009 may require action before January 1. Please call our office if you wish to discuss this further. ■

## **Rebuilding Employee Confidence in Retirement Plans**

Another casualty of market turbulence is employee confidence in looking ahead to a comfortable retirement. A recent survey by the Employee Benefit Research Institute (EBRI) indicates that the percentage of workers who are very confident about having enough money for a comfortable retirement decreased from 27% in 2007 to 18% in 2008. NOTE: This survey was taken before October when the investment market was extremely turbulent, so the 18% figure may now be too high.

An article in the June 14, 2008 edition of the Economist says too many employees in 401(k)-type plans are "sleep walking towards an impoverished old age." The financial health of Social Security is getting a lot of attention and many Americans are bracing themselves to receive less than they originally thought they would receive.

Americans need to be re-educated about how much they are going to need for retirement. Many of the mutual fund and insurance companies that provide 401(k) plans offer planning tools to assist employees in determining how much they need to be saving, based on factors like age and standard of living. Unfortunately, many employees have never availed themselves of these tools.

Employers also need to be thinking about how they can assist employees to save more. Automatic enrollment is one way to get employees who are not enrolled to start saving. Studies show inertia is a powerful force: many employees simply do not fill out the necessary forms to start saving. Employers may need to redesign their compensation programs to shift more compensation to the retirement plan.

Unfortunately, many Americans may be required to simply work longer. A book written by Alicia Munnell and Steven Sass called Working Longer: The Solution to the Retirement Income Challenge

sets out a dismal outlook for Americans who expect to retire on pension and personal savings. The authors believe that if Americans were to work longer, they could set financial goals that are attainable rather than "forbiddingly distant."

Financial professionals who advise plan sponsors and participants are facing a significant challenge to guide their clients in this re-education process. Does anybody really think the government can possibly fix this problem? Congress may enact law changes to make the process more palatable, but the final responsibility will fall on Americans themselves. ■

## **Bicycle Commuting Reimbursement Plan**

Americans are increasingly looking for ways to cut costs. For many employees the cost of commuting back and forth to work imposes a significant expense. In downtown Chicago, where our offices are located, we have observed an increased number of bicyclists peddling around. How many are commuting is not known to us, but bicycling can save a lot of money in train and parking costs (as well as provide health benefits).

Employers can assist this process with a new benefit plan, effective on January 1, 2009, that permits employees to pay for various costs incurred in bicycling between home and work on a pre-tax basis. Eligible costs include purchasing, maintaining and storing the bicycle. An employee may pay up to \$240 per year in eligible costs. [NOTE: Employers save their share of FICA on these employee deductions.]

Employers can also investigate other ways to make bicycling to work easier, like bike racks and in-door storage. If you rent space, ask your landlord what can be done to encourage employees to bike to work. Many bike shops are now offering free instructional programs on biking to work, such as how to dress and dealing with inclement weather. ■

## **Outliving Your Retirement Assets**

A study by Ernst & Young on behalf of Americans for Secure Retirement, concludes that three-fifths of middle-class retirees will outlive their retirement assets if they attempt to maintain their pre-retirement living standards. Some findings of the study include:

- Middle-class Americans entering retirement now will need to reduce their standard of living by an average of 24% to minimize the likelihood of outliving their financial assets.
- Americans who are seven years away from retirement will in all likelihood have to reduce their standard of living by 37%.
- A guaranteed source of income beyond Social Security, such as defined benefit/cash balance plans and annuities, better prepare retirees for a financially secure retirement. [NOTE: For defined benefit/cash balance plans, this assumes retirees annuitize their benefits rather than cash them out in lump sums.] Looking at a hypothetical couple with \$75,000 of guaranteed income annually (in addition to Social Security), the study concluded this couple had a 31% chance of outliving their financial assets compared with a 90% chance of outliving their assets if the couple had Social Security as their sole source of guaranteed income.

The complete study is available at [www.paycheckforlife.org](http://www.paycheckforlife.org).

*Comment:* Most of the defined benefit or cash balance plans that our clients maintain offer lump sum distribution options, which not surprisingly, virtually all employees elect. The rules prohibiting discrimination that govern all qualified retirement plans would not permit these plans to limit lump sums to higher net worth retirees. Yet this study (as well as others being published) suggest that a sounder national retirement policy may need to take a closer look at requiring lower net worth retirees to annuitize at least some part of their retirement savings. ■



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