
the dana report

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ABOUT THE FIRMS

Jennings 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

"In the right light, at the right time, everything is extraordinary."

– Aaron Rose

"Even if you're on the right track, you'll get run over if you just sit there."

– Will Rogers

"Money's a horrid thing to follow, but a charming thing to meet."

– Henry James

Route To:

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Jennings Law Firm, Ltd.
Dana Consulting Group, Ltd.
Telephone: 312.332.7733
Facsimile: 312.332.8814
www.danaconsulting.com

RMDs Suspended For 2009

For 2009 only, Congress has suspended the rule that certain required minimum distributions (RMDs) be made from defined contribution plans and IRAs. The Internal Revenue Service recently issued Notice 2009-9 to explain the new rule.

1. RMDs may be suspended only from certain retirement plans. The plan must be an employer-sponsored defined contribution plan such as a profit sharing plan (including 401(k) plan), money purchase plan, SEP plan, SIMPLE plan, 403(b) plan or 457(b) plan. IRAs also qualify.

Comment: RMDs from defined benefit plans are NOT suspended.

2. Certain individuals who are required to make an RMD for 2008 are permitted to defer making those distributions until April 1, 2009. The 2008 RMDs are NOT suspended and still must be made.
3. Certain individuals who are required to make an RMD for 2009 are permitted to defer making those distributions until April 1, 2010. They may suspend making the 2009 RMD but may NOT suspend making the 2010 RMD.
4. If a beneficiary is receiving distributions over a five-year period, any 2009 installment can be suspended.
5. The IRS recognizes that financial institutions who process RMDs and must issue Forms 1099R, may experience computer programming delays in implementing the applicable reporting rules as modified by the RMD suspension law change, and is offering some relief. That said, individuals should be careful in reviewing tax reporting forms they receive to ensure the forms are accurate. ■

Switching 401(k) Plan Vendors - Fiduciary Issues

The economic downturn invariably puts pressure on business owners to cut costs. We know of one mutual fund company who has consistently underperformed in the market, that has dramatically reduced their fees in order to attract new business. Business owners and their financial advisors need to be very sensitive to their fiduciary duties under ERISA before they change plan vendors just to cut costs. We have placed an excellent article on this topic on our website, www.danaconsulting.com, under the Advisors Section. ■

401(k) Plan Fees

Congress is focusing on fees paid by 401(k) plans. This, and companies failing to timely deposit employee contributions to the plan, are perhaps two of the hottest issues right now affecting these plans.

The Congressional Research Service prepared the report, *Fee Disclosure in Defined Contribution Retirement Plans: Background and Current Legislation*, describing the structure of 401(k) plan fees, the impact of fees on account balances, and three bills pending in Congress. The report can be ordered for a fee by calling BNAPLUS at 800-372-1033.

Comment: The three bills in Congress originated in the Bush Administration. It remains to be seen what impact the new Obama Administration will have on this very important issue. We would not be surprised to see legislation passed in light of the significant decline in 401(k) account balances that occurred over the past year. ■

Tax Strategies for IRA Owners

The 2008 investment market decline resulted in many IRAs losing significant value. While IRA owners may not deduct on their personal returns

losses incurred in their IRA investments, there are some tax strategies for IRA owners to consider.

An article, published by Research Institute of America, explaining these strategies is on our website under the Education Section. ■

Miscellaneous

According to a survey conducted by Robert Half International (an employment placement consultancy) and CareerBuilder.com:

- The primary recruiting challenge remains a shortage of qualified professionals, according to 59% of respondents.
- Almost 20% of hiring managers reported that higher gas prices and commuting costs are significantly impairing their ability to attract qualified employees.
- Recruiting a new full-time employee takes an average of four to 14 weeks.
- Hiring managers reported that almost 43% of resumes they receive come from unqualified candidates.

What keeps small business owners awake at night? According to a survey by the National Federation of Independent Business and Wells Fargo, it came down to those things over which the owner has no control. Half of the top ten problems were costs, such as health care and energy. The remaining problems came under the category of taxes, such as income taxes, property taxes, and tax complexity. The cost of health insurance for employees continued its 20-year run as the #1 worry, with more than 55% of respondents calling it "critical." ■

Workers' View of 401(k) Plans

Investment market turmoil over the past 18 months has many advisors questioning the future of 401(k) plans as a means for Americans to

save for retirement. According to a survey by the Investment Company Institute in late 2008, Americans are not quite ready to give up their 401(k) plans.

1. Workers still overwhelmingly view an employer-sponsored plan as the best way to save for retirement. Fewer than one in seven participants changed their asset allocation and fewer than one in ten changed their contribution amount.
2. Workers believe the retirement system in America can be improved. The retirement security system as a whole must be looked at, including Social Security. Americans recognize that Social Security is in a severely precarious financial situation.
3. One improvement endorsed by Americans is to increase the amount of contributions that can be made as workers get older. Under current law, participants who have attained age 50 may make an additional catch-up contribution, which for 2009 is \$5,500.
4. Plan participants increasingly want investment advice in managing their retirement savings. Participants also want better disclosure on all of their investment options. They want information they can understand and use on key topics, such as investment risks, returns and fees. ■

Fiduciary Best Practices

In 2008, the US Supreme Court handed down two important decisions affecting retirement plan fiduciary governance: the LaRue case and the Glenn case.

We have placed on our website under Advisor Services, an excellent article prepared by two attorneys that lays out strategies for plan sponsors and their advisors to be proactive in resolving plan disputes before those disputes end up in court.

The article stresses that courts will offer considerable discretion to fiduciaries who follow established procedures in adjudicating plan disputes.

Comment: Protecting our clients from ERISA lawsuits is something in which we invest considerable resources. This is one of the reasons our firms draft their own 401(k) plan documents, rather than use "off the shelf" documents which are intended to be all things to all people. For example, we have placed language in our documents for the court case of Herzberger v. Standard Insurance Company to qualify for the "safe harbor" treatment relating to the scope of the plan administrator's authority. ■

ERISA Bonding Requirements

The U.S. Labor Department recently issued guidance on various issues relating to ERISA's bonding requirements. There is a great article summarizing the Department's guidance on our website, under the Education Section. Some of the highlights include the following:

1. An ERISA bond must provide for recovery of plan losses due to acts of fraud or dishonesty. The bond does not protect against losses due to negligence or bad investments.
2. An ERISA bond is not the same as a fiduciary bond. A fiduciary bond protects the fiduciary while an ERISA bond protects the plan.
3. Every person who has access to plan funds must be bonded. Financial advisors do not have to be bonded unless they have access to plan assets. ERISA refers to persons who "handle" plan assets and the guidance describes what the term "handle" means for this purpose.
4. The premium for the bond may be paid by the plan or by the plan sponsor. If paid by the plan sponsor, it is a deductible business expense.

Form 5500 contains a question whether the plan has a bond. Thus, the existence of the bond tends to come up as a result of an inquiry by the Labor Department after reviewing the filed return. ■



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