



Trends

NOT INTERESTED

Disengaged DC plan members could land a plan sponsor in legal hot water

BY LISA CHAMZUK

With funding risk in a DB pension plan borne by the employer, DB plan sponsors have little need or incentive to engage members—beyond annual statements—until they terminate plan membership or retire. In contrast, the shifting of investment responsibility and risk to members in a DC plan means those members need access to more information about investments, as well as education around the options available through the plan and how to select those options. And it means DC plan sponsors must ensure members are engaged in that information and education, lest they leave themselves open to legal challenges.

Engaged DC plan members will often ask questions to clarify plan communication. Disengaged members are more likely to act on a misinterpretation. And engaged members know what is being accumulated in their accounts, while disengaged members may be surprised by a savings shortfall.

The consequences of disengagement pose legal risks that leave employers vulnerable to the threat of litigation. Here are just a few scenarios to be leery of.

Conversion to DC: If a DB pension plan is converted to a DC plan, disengaged members may not pay sufficient attention to available investment options in the

new plan and may make a choice that does not serve their interests.

Default option: Disengaged members are more likely to have their assets invested in their plan's default option. If that results in less retirement income than expected, members could take the position that the employer did not adequately explain the investment choices and, therefore, denied members the ability to select investments that better suited their retirement needs.

Risk appetite: Disengaged members may not understand the risks associated with the various investment choices. They may not pay enough attention to the nature of the various investments and, as a result, may make choices that are too risky or too conservative. Members who don't feel their accumulated savings are sufficient may then try to blame the employer for the manner in which those options are communicated.


Transfer risks: If members who are disengaged don't understand their transfer rights among investment options, they may blame the employer for an allocation that does not suit their circumstances.

Costs and Fees: Disengaged members may be unaware of the costs and fees associated with certain investment options and then complain when they realize these have been applied to their account.

Communications Plan

To prevent the legal risks associated with disengaged DC plan members, employers need to encourage disengaged employees to become more active when it comes to their retirement income. And employers should also be sure to keep track of all steps taken to effectively communicate with members about investment options and any plan design changes, so this engagement can be demonstrated in the event that a member presents a legal challenge.

Little detailed legislative guidance exists on how DC plans should communicate with members (aside from the bare minimum statutory entitlements to plan information). But CAPSA has published a number of useful and detailed guidelines. For example, CAPSA's Guideline No. 3 states that for every investment choice offered, the plan sponsor should provide members

with a prescribed list of information about the option. Guideline No. 3 also provides that the sponsor should adopt a default option policy and should provide that policy to any member who fails to make a proactive investment choice. Not only do these recommendations help to engage members of the DC pension plan, they also provide an employer a measure of defence against any assertion that the employer failed to give the member adequate information. 

Fact File

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