

EMPLOYMENT & EMPLOYEE BENEFITS

Financial education will help calm future benefit litigation storm

Most employees want to earn a fair wage, provide for their families, educate their children and retire with dignity. To attract and retain the work force necessary to generate a higher return on investment for shareholders, employers support these objectives using reward programs, cash and non-cash compensation.

Risks that can prevent satisfying these objectives include premature death, disability, significant health care expense, ineffective savings strategy, prolonged illness and living too long. Designed to manage these risks, benefit plans are an employer and employee "bond," providing social and economic well-being. Unfortunately, much remains to be done for employers to minimize their risk from what some call the "perfect storm."



**EMPLOYEE
BENEFITS**

**DON
ATHERTON**

AVOIDING THE STORM

Many observers concur with the view of Buck Stinson, president and CEO of GE Financial Advisors, who predicts "a future of tremendous stress, if not crisis, in our social framework in the United States, resulting from aging baby boomers with a lack of savings and personal insurance to offset the rising cost of health care."

In 2001 nearly 10 percent of the people aged 65 to 84 and 13.7 percent of those over age 85 lived in poverty, according to the U.S. Census Bureau. Imagine the poverty rate in 2024 given increased life expectancy, aging baby boomers, increased

use and cost of health care, high levels of consumer debt, low personal savings rates, a bankrupt Social Security system, reduced defined benefit retirement coverage, limited long-term care coverage, minimal life insurance protection and reliance on employee directed defined contribution plans as the primary savings tools.

If this issue is not resolved, there could be a time when several hundred million adult Americans are inflamed by high taxes and their elderly parents are living in poverty. Trial lawyers and proponents for social change may see this as an opportunity and seek retribution for a bond of trust broken years earlier by former employers of these elderly poor.

To avoid this storm, consider Deloitte Consulting's Top Five Benefit Priorities for 2004. It identifies a shared need to effectively manage health care costs today and in the future by more effectively utilizing financial assets.

The study lists as employer priorities:

- Control health and welfare cost (86 percent).
- Promote increased consumerism via plan design (32 percent).
- Expand the use of self-service technology for communications and/or administration (32 percent).
- Consider adding or moving to a consumer-driven health care model (27 percent).
- Provide financial/retirement planning tools and information. Provide increased investment education. Evaluate/implement/expand the use of Internet/intranet applications (26 percent each).

The study lists as employee priorities:

- Evaluate the adequacy of current level of retirement savings (66 percent).

- Evaluate current investment options (62 percent).

- Learn more about health risks and how to control them (48 percent).

- Identify additional ways to save for retirement (48 percent).

- Better manage health costs (41 percent).

FIDUCIARY LIABILITY

Employers who offer benefit plans, especially qualified retirement plans, accept fiduciary liability under the Employee Retirement Income Security Act. ERISA requires employers to act solely in the interest of plan beneficiaries. Thus, a chief financial officer cannot award the company's 401(k) plan business to a bank in order to gain favorable lending terms. Doing so would be illegal and could subject the CFO to personal liability.

Section 404(c) of ERISA provides limited fiduciary protection for plan sponsors who meet minimum plan design, communication, education and monitoring criteria. Even with this modest compliance required, it is estimated that less than 50 percent of employers with less than 1,000 employees are 404(c) compliant. Enron Corp., New York Life, SBC Communication, and First Corp. are employers readily assumed to be 404(c) compliant, yet all have been sued for breach of fiduciary duties.

What is really needed is a better outcome than presently offered to employees. To achieve this, employers need to:

- Redefine their employee benefit strategy.
- Re-examine their buying practices.
- Audit internal procedural for ERISA compliance.
- Document decisions within benefit committee minutes.

- Consider greater employee financial education.

- Provide “discretionary investment management services” through a co-fiduciary.

- Provide employees with advice from a certified financial planner.

FINANCIAL EDUCATION

According to a June 2001 survey by The International Society of Certified Employee Benefits Specialists, 96 percent of human resource professionals agree that workers want and need financial planning education and advice. A new financial planning benefit combined with co-fiduciary investment advice is entirely consistent with employers’ desire to manage or reduce cost through benefit program policy and design.

The potential return on investment for workplace financial education is estimated

to be at least three to one, according to Virginia Tech Professor E. Thomas Garman. Studies show that 15 percent of employees are currently spending company time managing personal financial issues, thus negatively affecting productivity. An employer with 1,500 employees and a \$60 million payroll can assume \$1.8 million in lost productivity due to financial stress.

Opponents of defined contribution plans frequently point to participants’ lack of investment expertise that equates investing with gambling. Plan sponsors may now allow employees to access “discretionary management” services from professional money managers who will indemnify plan sponsors with respect to the management of assets. This step alone will significantly reduce fiduciary exposure to participant litigation.

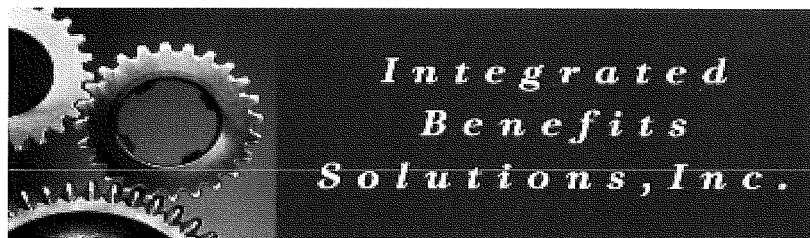
With the use of technology and personalized help of a CFP, the employee

will gain a lifetime financial plan. The employee will get help with personal budgets, credit counseling, employee benefit elections with pre-retirement and post-retirement risk management needs, retirement and education savings needs with investment strategy and monitoring, as well as objective communication of benefit plan changes providing for employees financial wellness.

Involvement of a CFP can help companies avoid the coming storm by increasing the financial well-being of both employees and retirees. This coordinated approach will provide a healthier ROI in addition to reducing litigation risk.

DON ATHERTON, CEBS, CFP, CLU, president of Integrated Benefits Solutions Inc., is a certified employee benefit specialist, certified financial planner and chartered life underwriter.

Reprinted with permission from the *Houston Business Journal*. ©2004, all rights reserved. Reprinted by Scoop ReprintSource 1-800-767-3263



“Helping you protect the people you love, reach your financial goals, and leave a legacy which represents your values.”

Don Atherton, CEBS, CLU, CFP®
650 N. Sam Houston Pkwy. E.
Suite 553
Houston, TX 77060
(713) 706-3600

SECURITIES & FINANCIAL PLANNING OFFERED THROUGH LINSICO/PRIVATE
LEDGER MEMBER NASD/SIPC.