

## Message From The Firm

This report is designed to help plan sponsors fulfill their fiduciary responsibilities for operating their retirement plans. While that requires a diligent effort in the best of times, it is even more difficult during hard times. To help navigate these troubled waters, we have included articles about issues that occur in “hard times.”

We also have an article on target date funds. The acceptance of these funds by plan sponsors and participants has been nothing short of remarkable. However, their losses in 2008 were terrible. As a result, the design and management of target date funds is being called into question. Plan sponsors need to make sure that they have asked the right questions about those funds . . . and that they have received good answers.

We also take a look at conflicts of interests. While plan sponsors have been required to protect their participants from the conflicts of interest of their providers and advisers for many years, little attention has been paid to this subject until recently.

We have written about following up on employee complaints—and properly documenting that follow up.

Finally, two of our employment law partners have written articles on important issues for employers—risk management to protect for employee theft and the monitoring of computer activities at work. We believe these articles will be helpful to our HR readers who oversee both benefits and employee relations.

*-Fred Reish*

## Risk Management: Listen to Your Employees

*By Fred Reish (FredReish@Reish.com)*



Most articles written by lawyers cover technical legal subjects. They educate the reader on the law, but typically give little in the way of

guidance about what the client should do . . . or not do. This article goes beyond a discussion of the law and even beyond advice about how to comply with the law. Instead, it discusses practical techniques for avoiding problems. In other words, this article is about risk management.

While ERISA is a voluminous law, it says little, if anything, about listening to employee comments and complaints. However, by listening . . . and acting, when appropriate . . . employers can avoid the disruption of an unnecessary DOL investigation and even the potential of fiduciary litigation.

On the first point—DOL investigations, one of the most common reasons for a DOL inquiry is a participant complaint. In other words, if one or more of your employees has a problem with your benefit programs, and if they believe that you will not respond to their questions or concerns . . . or if they express their concerns, and you do not respond . . . they often turn to the regional office of the DOL’s Employee Benefits Security Administration. Those offices have active programs for following up on complaints.

However, in my experience, many of those DOL inquiries could have been avoided. That is because they are often caused by a misunderstanding about the procedures or benefits under your programs. However, when the participants believe that their

questions will not be openly and honestly answered, and when they turn to the DOL for help, a process is initiated that could result in a full-blown DOL investigation. In some cases, the initial question is easily answered by the employer, but the investigation leads to other issues.

As a result, it is important that your employees have a non-threatening procedure for raising questions and getting answers. Ask yourself, are the lines of communication clear? Who should be contacted? Do the employees really have access to that person? Does the designated person have the authority to answer the questions? Does that person know when the question should be “kicked upstairs” to a senior level?

Even if you answer those questions in the affirmative, you should periodically audit the process. For starts, you should have a file where you keep the employee complaints . . . and your responses. Go back and look at your 2008 files? Are the notations of the conversations adequate? Were the responses documented? In your estimation, were the complaints handled in a respectful and intelligent manner?

In some cases, there is a fiduciary duty for the plan committee to oversee that process. As an example, it is the plan committee that typically hires and oversees the service providers for the 401(k) plan. That includes both the non-fiduciary providers (like your recordkeeper) and the fiduciary service providers (like your trustee and investment consultant). ERISA says that the plan committee, operating as a

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## Avoiding an Inadvertent Deferred Compensation Plan



By *Marty Heming (MartyHeming@Reish.com)* and  
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A client came to us recently to discuss a serious cash flow issue. The company is in the construction business in California, which, like the rest of the country, is suffering due to the downturn in the real estate market. The client wanted to avoid layoffs, so he was contemplating asking officers to take a 40% pay cut and rank and file employees to reduce their pay by 10%. If enough employees agreed, he could retain most of his staff. As a “sweetener,” the client said he would promise all of the employees who agreed to the pay cut that their lost pay would be restored once the company’s cash flow returned to 2007 levels—in about five years according to the client’s projections.

The client was surprised to learn that this generous “make-up pay” arrangement would be viewed as a deferred compensation plan that is subject to specific requirements in both form and operation and that if the plan fails to comply with the rules, the employees could be subject to immediate taxation on

the “deferred” amount plus a 20% penalty. In other words, if the client simply embarked on this program without getting expert advice, it could wind up hurting its employees more than benefiting them.

In our experience, our client’s consternation is not unusual. By now, it is widely recognized that in 2004, section 409A was added to the Internal Revenue Code. That section requires nonqualified deferred compensation plans to meet a number of requirements related to the election to defer, the circumstances under which payment can be made and the timing of such payments. The rules were explained and amplified in Treasury Regulations that went into effect in 2007 and required compliance by December 31, 2008.

It is also widely recognized that the new rules apply to the traditional executive salary deferral plans, supplemental retirement plans and the like. But the definition of a “plan” is broad and covers virtually any arrangement under which an employee receives compensation at a time later than the year in which he performs the related services. So, for example, a “plan” can include a stock option or stock appreciation rights plan (and similar arrangements for non-corporate entities), executive employment agreements

that promise future benefits, severance arrangements and the like. (There are a number of exceptions that may apply, which adds to the complexity of the rules.)

Simply put, employers must be vigilant to avoid adopting an informal arrangement—like our client’s proposed make-up pay program—that will be considered a deferred compensation plan subject to the 409A rules. While it is not especially hard to comply with the rules and they are not especially onerous, failure to comply can be disastrous for the employees. And while the penalties fall on the employees, it takes very little imagination to see that the employees will look to the employer to make them whole.

So what could our client do? There were two solutions. The first was to adopt a formal written plan that complied with the 409A requirements. Since the company was not in a position to make a binding commitment as to when the make-up pay would be given to the employees, the client asked for an alternative. We suggested that after effecting the reduction in pay, management issue to all employees an informal statement that the Company would not forget the loyalty of those employees who chose to stay during the time of crisis but without any formal promise to make up their lost wages.

The important point to take away from this story is that employers need to be aware of the breadth of the 409A rules and need to discuss with their tax advisers the potential impact of these rules whenever they contemplate any arrangement that may constitute a promise to pay later for services rendered today. ❖

### 401(k) Retirement Plan Withdrawals and Securities Brokers

Earlier this year, the Financial Industry Regulatory Authority (FINRA) announced that it fined a large broker-dealer \$3M and ordered it to repay more than \$4.2M in losses to 90 retirees. According to the FINRA press release, the brokers persuaded plan participants to take early retirement allegedly based on unrealistic promises of consistently high investment returns and by espousing unsuitable investment strategies.

The unrealistic predictions were that the brokers’ customers “would earn investment returns of 10% each year.”

One of the brokers has been permanently barred from the securities industry and his supervisor has been fined \$50,000. Charges have also been filed against the other broker.

The press release went on to say: “. . . the customers initial investment was eroded by market declines and the customers monthly withdrawals were not funded by income but

were really distributions of principal. Some customers were forced to return to work at a greatly reduced income in order to meet their basic living expenses.” In some of the cases, it appears that the participants began taking in-service distributions in order to fund the brokerage investments while they were still working.

While it does not appear that officers of the plan sponsor knowingly gave the brokers access to their employees, the press release states: “. . . that, in exchange for various gifts to certain . . . employees, [the broker] improperly obtained confidential employment records . . . he utilized this confidential information to attract new customers.”

While this case involved egregious circumstances, we are aware of situations in which employers have allowed brokers access to their premises and the opportunity to work with their plan participants for the purpose of investment education or advice on the 401(k) accounts and for the purpose of

selling additional investments or insurance to the employees. Plan sponsors should be aware that, by giving salespeople or advisers access to their employees that they may be viewed as impliedly endorsing the salespeople. In that case, the company should make sure that their due diligence is prudently done and that they fully understand the services and investments being sold to the employees. As a part of that, companies are well advised to make sure that there is full disclosure to the employees, prior to the sale, of conflicts of interest and of commissions (including any compensation to affiliates).

In addition, there is a possibility that the broker may become a fiduciary for giving investment advice to the participants, particularly if the broker is affiliated with the plan provider or with the financial adviser for the plan. In other words, employers need to approach this issue cautiously. While these arrangements are not prohibited, they nonetheless raise issues and those issues should be dealt with at the beginning of the relationship.

## Suspending 401(k) Matching Contributions



By Fred Reish ([FredReish@Reish.com](mailto:FredReish@Reish.com))

During the 2000 to 2002 recession, we saw, for the first time, the widespread suspension of 401(k) matching contributions as a tool for reducing costs. As the economy improved, the matching contributions were, for the most part, resumed. In the current recession, matching contributions are being suspended by many more companies . . . more than 20% or more of the S&P 500 companies have suspended their matching contributions. While I suspect that, when the economy improves, matching contributions will be re-instated, that remains to be seen.

The suspension of matching contributions is now an accepted form of cost savings to be employed in economic downturns. In many ways, the suspensions make sense. For example, the suspensions are preferable to a company going out of business, to layoffs of additional employees, to cuts in paychecks, and/or to reductions or eliminations of medical insurance. However, I do not believe that most employers are fully aware of the long-term impact of the suspensions.

With that in mind, I want to introduce you to the “Russell 10/30/60 Retirement Rule.” In its essence, the “rule” is that, for each \$10 contributed by an employee to a 401(k) plan, his account will earn another \$30 during his participation and, after retirement, his rollover IRA will earn another \$60. So, each \$10 of deferrals results in \$90 of investment earnings.

Now, change the analysis from the employee’s deferral to an employer’s matching contribution.

For each \$10 of matching contributions, the participant’s account will earn \$30 during his working career and his IRA will earn \$60 during retirement.

Assume that the employee makes \$50,000 a year and defers 6%, or \$3,000. That \$3,000 deferral would generate \$9,000 of investment earnings during the working, or accumulation, years and \$18,000 of earnings during the retirement years. If the employee stopped deferring, he would have \$3,000 to spend currently, but would lose \$30,000 of retirement benefits.

Moving to the matching contributions, assume that the plan sponsor matched 50¢ on a dollar for the first 6% of pay. That means that the employee would have received a \$1,500 matching contribution on the \$3,000 deferral. The matching contribution would generate \$4,500 of investment earnings while the employee was working and another \$9,000 of earnings during retirement, for a total of \$13,500 of earnings on top of the \$1,500 match.

If the employer suspends the match for one year, the employer would save \$1,500, but the employee would lose \$15,000 of retirement income. To create an even worse scenario, assume that the employer skipped two years of matching contributions during the recession at the beginning of this decade and then skipped another two years of matching contributions during the current recession. While the combined employer savings would be \$6,000, the cost to the employee would be \$60,000 in retirement benefits. Imagine how much \$60,000 would mean—in terms of standard of living—for a retired employee whose working compensation

was \$50,000 a year. Obviously, it is significant.

The decision to suspend contributions is a difficult one. The purpose of this article is to help with the analysis by demonstrating the long-term impact of a suspension of 401(k) matching contributions. ❖

### PLANSPONSOR’s 15 Legends of the Retirement Industry

This is our 6th installation of the 15 “Legends.” In our future newsletters and bulletins, we will be featuring the other Legends that were selected by PLANSPONSOR. Fred Reish was selected as one of the 15 “Legends of the Retirement Industry.” These “Legends” are individuals who have, in the past decade and a half, made a lasting contribution to the nation’s retirement security.

The Pension Protection Act established a new era of defined contribution logic. The PPA had neither a champion nor a catalyst, what it had was the support of the financial services industry and some House and Senator staffers who worked to overcome barriers for the new act. Most of the momentum behind the PPA can be traced to Gregory J. Dean, Jr., Minority General Counsel on the Senate Committee on Health, Education, Labor and Pensions and his boss, Wyoming Republican Mike Enzi, whom did not allow the bill to die a slow death.

Due to those like Dean, who refused to allow the PPA die, the bill came to a vote and passed.

Congratulations to Mr. Dean, for “his skill in navigating the treacherous shoals of the Pension Protection Act, striking a balance between protecting key elements of the current system while reforming others, and laying the legislative foundation for a new generation of retirement savings programs.”

## In Tough Times, Reducing or Suspending Employer Contributions can be a Welcome Relief- Part II



By Heather Bader-Abrigo ([HeatherAbrigo@Reish.com](mailto:HeatherAbrigo@Reish.com))

In our employee benefits practice, we continue to see the impact the economy is having on our clients. While there are signs that the economy is starting to slowly recover, our clients still come to us with liquidity issues. A common question is whether the employer can stop making contributions to their 401(k) plan, especially safe harbor matching and safe harbor nonelective contributions. The issue of suspending safe harbor contributions is difficult because the employer is required to commit to making them before the beginning of the plan year in order to avoid having to perform the normal 401(k) nondiscrimination testing.

In Part I of this article, we discussed how a plan sponsor could reduce and/or suspend safe harbor matching contributions, that is, the commitment to match the deferrals of participating employees up to a specified percentage of pay. [[http://www.reish.com/publications/article\\_detail.cfm?ARTICLEID=823](http://www.reish.com/publications/article_detail.cfm?ARTICLEID=823)] At the time, the Treasury Regulations did not provide for the reduction and/or suspension of safe harbor nonelective contributions (i.e., the commitment on the part of the employer to make a contribution for all eligible employees, regardless of whether they defer into the 401(k) plan). The only way to effectively stop such contributions mid-year was to terminate the plan, which many employers did not want to do. However, on May 18, 2009, proposed regulations were issued that permit the reduction and/or suspension of safe harbor nonelective contributions. The proposed regulation

specifically states that plan sponsors may rely on a good faith interpretation of the rules even though they are not yet final.

In recognizing the need for such relief, the IRS stated in the Special Analyses to the proposed regulations that "...adopting the provisions in these regulation [sic] will in almost all cases save the small business owner money." The new proposed regulations will allow a plan sponsor to amend their safe harbor 401(k) plan to reduce and/or suspend qualified non-elective contributions during the plan year, and not be forced to terminate the plan.

To be a "safe harbor" plan, and thus avoid performing nondiscrimination testing, the plan must meet a number of requirements, including a contribution by the plan sponsor of either a fully vested match or a fully vested nonelective (or profit sharing) contribution 3% of an eligible employee's compensation (regardless of whether the employee makes deferrals). The proposed regulation allows plan sponsors to reduce and/or suspend these nonelective contributions on a prospective basis, but to do so, the employer must comply with the following rules:

- The plan must be amended to provide that it must satisfy both the ADP and ACP tests for the entire plan year using the current year testing method, regardless of the fact that safe harbor contributions were made for part of the year;
- All safe harbor contributions must be made up until the effective date

of the amendment with respect to all deferrals made to that time;

- The reduction or suspension of the nonelective safe harbor contribution may not be effective earlier than 30 days after delivery to the eligible employees of a notice containing the information described below (or 30 days after the amendment is adopted, whichever is later);
- Eligible employees must be given a reasonable opportunity to change their existing deferral elections after receipt of the notice, but prior to the effective date of the amendment;
- The notice to eligible employees must contain an explanation of the following:
  - i) the consequences of the amendments reducing or suspending future safe harbor nonelective contributions;
  - ii) the procedures for changing the employee's deferral election and, if applicable, employee contribution elections; and
  - iii) the effective date of the amendment to the plan which suspends and/or reduces the nonelective safe harbor contribution.

Now that the IRS has provided for the reduction and/or suspension of the safe harbor nonelective contribution, plan sponsors may be able to avoid terminating their plans and continue to provide retirement benefits to their employees. This relief should also continue to help plan sponsors with liquidity issues as the economy begins to recover. ❖

## Background Checks and Employee Theft



By Mark Terman ([MarkTerman@Reish.com](mailto:MarkTerman@Reish.com))

Not enough employers conduct background checks, even for employees who will have control over company money and assets.

Those companies open themselves up to fraud or embezzlement. In many cases, a background check of references and public records before the employee is hired can reveal prior acts of dishonesty that would have prevented the decision to hire in the first place.

One of our clients called for advice when it discovered evidence that its controller embezzled from the company. We advised our client to conduct an immediate internal investigation, to gather witness statements and documentary evidence to support this serious charge, and to keep this investigation confidential on a “need to know” basis. Even if the controller had stolen, the company had to be in a position to make a good faith and fair business decision that the improper conduct occurred before a decision to terminate could be made. All key information was collected within 24

hours and the employee was fired. At the time of the exit interview, the controller was agitated and threw a punch at the owner of the company. Fortunately, no one was seriously injured. The company made appropriate reports to the police and hired additional security personnel to protect its premises and personnel. This all probably could have been avoided at the hiring stage.

As is often the case, the company found out about the embezzlement by accident. The company received a notice from the California tax authorities to garnish the wages of the controller for his failure to pay back taxes. The controller had been with the company for less than a year. When the owner of the company informed the controller (who had a relatively common name), he said that the State was looking for someone else. The controller pointed to the company payroll records to show that his social security number (SSN) was different from the SSN on the garnishment. Not convinced, the owner checked the controller’s personnel file and discovered a copy of the social security

card given to the company at the time of hire to verify citizenship, which had the same SSN as on the garnishment notice. The owner then determined that the controller had not only falsified company payroll records regarding his SSN, but had also given himself a significant pay raise that the company failed to detect for about 6 months.

When we were contacted by the client, we had our investigator do a basic background check. We found that the controller not only had a relevant criminal history, but that the SSN he was currently using belonged to someone else. He had been using several different SSNs for various purposes in recent years, and had maxed out “his” credit using the various SSNs. All of this information could have been lawfully obtained before the controller was hired for a nominal cost.

For nominal cost at the recruiting and hiring stage, our client could have avoided embezzlement and placing its employees and property at risk of injury. Fortunately, the controller was caught and fired before he could steal more and before anyone was seriously hurt. Background checks can also be useful in screening out managers or supervisors who have a history of sexual harassment, workplace violence, or other misconduct. ❖

## Restructuring of Firm’s Practice

We have recently restructured the firm by realigning and expanding our practice groups. The unique aspects of the restructuring are that the practice groups are focused on specific types of clients and combine both litigation and legal consulting services for those clients. That breaks from law firm tradition in a couple of ways. First, most law firm departments are focused on legal specialization, rather than the needs of clients. That is not illogical, since many clients will look for attorneys who are specialized in certain areas of the law. However, we have found that, by focusing on clients, we are better able to combine our legal specialization with industry experience—and thereby add value to our client services.

Secondly, in most law firms litigation attorneys and consulting attorneys operate independently. However, we have decided that this silo approach limits the value that clients can receive from a combination of the

consulting and litigation attorneys. In particular, by combining the attorneys into client-focused groups, we can offer better service to our clients.

For example, the combined efforts will enhance the role of risk management in our practice. By drawing on the lessons learned from litigation, our practice groups will be better able to recommend operational and compliance-related solutions to avoid prospective exposure. Conversely, we are able to leverage the collective knowledge of our attorneys who provide consulting services for support on technical issues that support claims and defenses for clients involved in threatened and/or pending litigation. Because many of our attorneys serve as industry arbitrators and expert witnesses, our clients are afforded the ability to obtain informal feedback on issues that may be outcome-determinative in their cases. We believe that this focus on the business of our clients, and on risk management, will

enable us to provide greater value to our clients, but with no increase in cost.

As examples of the new structure, one of our new practice groups is the Plan Sponsor Service Group.

This group combines the experience of our ERISA litigation attorneys with that of our ERISA consulting attorneys to provide plan sponsors with sophisticated advice on the investment, operation and governance of their benefit programs, but with the kind of risk management approach that the litigation attorneys can add. In addition, our employment law attorneys participate in this group, because many of our plan sponsor clients work with us through their human resources departments. The understanding of employment law issues adds yet another dimension to our advice.

In this way, we are able to counsel clients on their fiduciary issues, their employment law issues, their tax qualification issues and other matters that impact their employee benefit programs.

## Monitoring Computer Activities at Work: What You Should Know



*By Pascal Benyamini (PascalBenyamini@Reish.com)*

The state of the economy continues to be on everyone's mind. As more companies are engaged in restructuring, including cuts to employee salaries, wages and benefits, some employees may consider alternative—sometimes not legal—ways of boosting their income. For example, without the employer's knowledge, an employee may be engaged in embezzling, stealing or outright directly competing against the company by funneling business and customers to a competitor the employee intends to join. While employee thefts of company resources, clients and trade secrets occur regularly, whether the economy is weak or solid, companies need to be even more vigilant during poor economic times. Vigilance, however, comes with a price as companies need to be mindful of their employees' privacy rights under federal and state laws and ensure that the company's policies and actions do not violate their employees' privacy.

We recently assisted one of our clients, a professional services firm based in California, in terminating an employee who was funneling our client's business and customers to a competitor, a company that our client suspected the employee intended to join in the near term. Our client learned of the employee's wrongful activities by monitoring all of their employee's computer related activities without violating the employee's privacy rights.

In assisting our client, we examined the three primary statutes applicable to employers' monitoring of employees' computer related activities: (1) the Federal Electronic Communications Privacy Act of 1986 ("ECPA"), 18 U.S.C. §§ 2510 et seq. and applicable amendments; (2) the California Wiretap Statute, Penal Code Section 631; and (3) the California Eavesdropping Statute, Penal Code Section 632.

Under federal law, the monitoring of employee's e-mails and computer by an employer is governed primarily by the ECPA. Under the ECPA, the key is whether the employees' messages are

intercepted during transmission (*i.e.*, real-time) or are retrieved from storage on the company's server. Unless exceptions apply, an employer is generally not permitted to real-time interception. If the message is already stored on the employer's server, however, then under the ECPA, the employer may access communications in electronic storage on its system.

Under California law, the California Wiretap Statute provides that anyone who "willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communications when the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state," has committed a crime and may be sued for damages by an aggrieved party. Cal. Penal Code § 631. Under Section 631, the consent of both parties to the communication must be obtained before an e-mail, for instance, is intercepted or recorded in real time.

Further, the California Eavesdropping Statute applies only to "confidential" communications. That is, the Statute prohibits anyone who does not have the consent of all parties to a "confidential communication" from eavesdropping upon or recording that communication by means of "any electronic amplifying or recording device." Reading stored e-mails is likely not to be viewed as "eavesdropping" with the aid of an "amplifying or recording device."

Given the foregoing statutes, one of the primary issues that employers face in drafting and implementing their computer usage policy is whether employers intend to intercept their employees' e-mail communication in "real time" or employers intend to retrieve the information from the company's server once e-mails, for instance, are stored on the server. Consulting with legal counsel is paramount to limiting your potential exposure when monitoring your employees' activities at work. ❖

### Risk Management

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fiduciary, has the legal responsibility to prudently select, and then prudently monitor, all of those service providers.

In recent guidance discussing those responsibilities, the DOL noted: "Fiduciaries also should take into account . . . participant comments and complaints about the quality of the furnished advice." (In this case, the DOL was discussing participant-level investment advice; however, the principle applies to all 401(k) services for participants.)

The DOL continued: "With regard to comments and complaints, we note that to the extent that a complaint or complaints raise questions concerning the quality of advice being provided to participants, a fiduciary may have to review the specific advice at issue with the investment adviser."

Thus, there is a legal duty for fiduciaries to investigate participant complaints . . . when appropriate. As they say, though, the devil is in the details. In my experience, it is often difficult to tell whether or not a complaint is well-founded. Where the complaint is frivolous and without merit, there is no duty to investigate. However, when a complaint is made, a plan sponsor typically does not have enough information to determine whether or not it has merit. Our advice is that plan sponsors should perform at least an initial inquiry to determine whether the complaint warrants further attention. That initial investigation should be documented and the information should be placed in a due diligence file. If the result of the initial investigation is that the employee complaint may have merit, the plan sponsor is obligated to take further steps.

My advice is that, once there is a decision that the complaint may be meritorious, the committee members should consult with an ERISA attorney about the scope of the investigation, the decisions that follow, and further communications with the employee. ❖

## Around the Firm

**Speeches:** In August, **Jason Roberts** presented "Washington Update" to the CUNA Mutual Group Retirement Plan Boston Symposium and the Transamerica Retirement Services Regional Sales Conference. He also presented the topics: "Introduction to Retirement Plan Foundations Update from Capitol Hill" and "Regulatory Challenges Under Proposed Reform Agenda," to the LPL National Sales Conference and the LIMR Regulatory Summit.

**Quotes:** On the July 19th issue of *InvestmentNews*, **Jason** was quoted in the article "Employees Name Investment Adviser in 401(k) Suit." On the July 23rd issue of *Plan Sponsor* magazine, **Fred Reish** was quoted in the article "Perspective: Retirement Readiness." He was also quoted in the articles "Are Fees Draining Your 401(k) Retirement Savings?", published in the *USA Today* on August 24th and "Relationship Rehab, Washington-Style," published on *Barron's* on August 31st. On August 10th, **Michael Vanic** was quoted in the article "Sotomayor Mainstream on ERISA Cases, Attorneys Say," published in *Pension & Investment* magazine.

**Articles:** In the July issue of the *Plan Sponsor* magazine, **Fred** wrote a column entitled "The Weights of Measures." In the July issue of *Plan Fix-It Handbook*, **Nick White** wrote the article "Update on 401(k) Plans, Cost Cutting and Safe Harbor Non-elective Contributions."

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