

## Lawsuits draw interest to 401(k) plans

*Employers advised to better understand fees, expenses*

TONY TAYLOR, STAFF WRITER

The new year may bring added momentum to efforts to improve investor protections in 401(k) retirement plans.

Fees charged by 401(k) plans are coming under increased scrutiny after multiple lawsuits were filed against nearly a dozen corporations, alleging the companies failed to make sure employees were not charged excessive fees.

It's an issue that could have wide-ranging financial implications for many companies. The 2006 Pension Protection Act requires employers to ensure the fees on their retirement plans are reasonable.

But many employers lack the expertise to carefully scrutinize 401(k) plans, says Chip Hunt, an accredited investment fiduciary and a principal in PrimeTrust Advisors. He says employers could leave themselves open to a lawsuit if they do not have a good understanding of the company's 401(k) plan.

"It's very difficult for employers to understand the true costs and expenses of a 401(k) plan," Hunt says. "The reason in general is that mutual funds, insurance companies and brokerage firms are not disclosing all of the fees to the employer."

Hunt and his business partner, Chip Hardy, formed PrimeTrust with hopes to offer fiduciary advice to small and mid-sized companies in South Carolina.

"Oftentimes, folks are naive in thinking the advice they are getting is from consultants when, in fact, it's a product salesperson," Hunt says. "Employees are vulnerable to paying too much."

Since being created in 1981, 401(k) plans have increased in popularity as a way for workers to finance their retirements. They have supplanted traditional pension plans as the primary way most Americans save for retirement. Some 47 million participants have \$2 trillion invested in the plans, according to a recent report by the Government Accountability Office.

**"Employees are vulnerable to paying too much."**

— Chip Hunt, *PrimeTrust Advisors*

Employers set up the plan and hire providers and administrators to manage it. There are three major cost components to a 401(k) plan: investments, record keeping/custodian services and plan administration. Because most 401(k) investments deduct their internal expenses automatically from each account, many plan sponsors are not aware of the total cost of operating their plan.

The GAO says that even small fees can significantly affect retirement savings over the course of an employee's career. The report listed the example of a 45-year-old worker who leaves \$20,000 in a 401(k) account until retirement.

If the average net return is 6.5 percent – a 7 percent investment return minus a 0.5 percent charge for plan administration – the account will grow to \$70,500 at retirement. But if the fee is 1.5 percent, the person will have \$58,400 at retirement.

In September 2006, a St. Louis law firm, Schlichter Bogard & Denton LLP, began a spate of class-action lawsuits when it filed in federal court a series of cases alleging that the 401(k) retirement plans of some of the country's biggest employers, including Lockheed Martin Corp. General Dynamics Corp. and Caterpillar Inc., misled and overcharged investors.

The fees in dispute are investment fees that are paid for marketing, selecting and managing a fund, and compensating brokers. A repeated claim in the suits is that investors were harmed by a common industry practice in which investors are indirectly charged for services provided to the plan.

This typically occurs when a plan administrator shares a portion of a fee charged to investors with other service providers. The suits allege that these revenue-sharing payments are not properly disclosed.

Penny Wofford, an attorney specializing in employment law with Ford & Harrison LLP in Spartanburg, says businesses will need to become familiar with fiduciary responsibilities in order to protect themselves from similar suits.

"Anytime you see this type of class-action suit, it starts at one location and then spreads to other areas of the country," Wofford says. <sup>85</sup>