

HICKS NOTES

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THINGS TO WATCH IN 2019

As this year progresses, there are a few legal issues and rulings we need to be aware of. This month's newsletter outlines a few trends to watch for in 2019.

CALSAVERS: For California employers with 5 or more employees, who do not currently offer a retirement plan, the State has mandated that they enroll in the CalSavers Retirement Savings Program. Calsavers.com is up and running for those who want to enroll as of July 1, 2019. Otherwise, employers **must** enroll in the future based on the employer's size:

- 100 or more employees, the enrollment date is June 30, 2020.
- 50-99 employees, it is June 30, 2021.
- 5-49 employees, the date is June 30, 2022.

CalSavers requires employees, at least 18 and receiving a W-2, to be automatically enrolled into the program (an after-tax ROTH IRA) at a default rate of 5% of gross wages. Employees can opt out or change their percentage at any time. In addition, employees can select from the range of investments offered. Employers do not contribute to this program.

For advisors, understanding this program and the opportunities for other qualified retirement plans will be critical when working in the small business market. For example, a Safe Harbor Match 401(k) plan would exempt the employer from CalSavers and could give the owner a bigger contribution without the employees contributing at all.

DOL FIDUCIARY RULE GETS OVERTURNED: With the Fifth Circuit overturning the [Fiduciary Rule](#) and BIC Contract exemption, two major impacts have emerged. First, the definition of "Fiduciary" for investment advice to retirement plans and IRAs reverts back to the five part test issued in 1975 and secondly, the Best Interest Contract Exemption (BICE) now ceases to exist.

Without the exemption, getting paid from the plan as a fiduciary would constitute a prohibited transaction. However, the DOL provided relief under [Field Assistance Bulletin 2018-02](#). In it, they state "The Department will not pursue prohibited transaction claims against investment advice fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that would have been exempted under the BIC exemption and Principal Transactions Exemption". The BIC exemption does not fall under discretionary advice. This can be problematic for those, where advice can be construed as non-discretionary or discretionary. In addition, this does not preclude claims from non-DOL or IRS parties. Advisors still have liability under ERISA and FINRA (Financial Industry

Regulatory Authority) from plan sponsors and, from trustees and plan participants for breach of fiduciary duties.

Finally, Alexander Acosta, Secretary of DOL, indicated under questioning on Capitol Hill on May 1st that the DOL will issue a new fiduciary rule in the future. As always, stay tuned.

DEFINED BENEFIT PLANS NEED TO BE RESTATED: All Defined Benefit Plans need to be restated for PPA by April 30, 2020. Many firms are overcharging for this and annual administration services. Review the restatement requirements and our fees [here](#).

This is a **great time to review all DB** clients for plan and contribution appropriateness. If they need a bigger contribution, then amend the formula or add a 401(k). By adding a 401(k) plan, the owner contributes \$19,000-25,000 (depending on age) and gets an additional employer contribution of 6 % of compensation. If funding is becoming an issue, now is the time to amend the formula before the participants have worked 1,000 hours. Failure to do this timely can subject the sponsor to contributions for 2019 that they cannot afford. In addition, given the volatility of the current market, a review of their investment returns may be in order: large gains lower deductible contributions while small gains or losses increase contributions.

NEW EASE OF CORRECTION PROGRAMS: The IRS issued [Rev. Proc. 2019-19](#), which allows for more self-correction under the Self Correction Program (SCP). Under these rules, a plan administrator may correct certain plan document failures and certain operational failures by retroactive amendments. This is good news for clients and administrators who have made mistakes in the past. In order to correct by a retroactive plan amendment, three conditions must be met:

- 1) The amendment must increase a benefit, right or feature.
- 2) The increase is available to all eligible participants, and
- 3) The increase is allowed under the Internal Revenue Code.

In addition, failures in the participant loan area may now be self-corrected. These include failure to obtain spousal consent and loans not in compliance with the plan document (for example, taking a second loan when not allowed in the plan.)

In conclusion, the retirement plan landscape is in constant change. We are here to help and have a free webinar series coming up in June that will address what you need to know to work in this field. Join us [here](#).