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Toto, I Don't Think We're in Kansas Anymore!—TPAing in the Time of COVID, Part I

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Did you ever think that four tiny little provisions in one little bill could cause so much confusion in the retirement plan industry? Did you ever think that one bill could cause you to spend enough time on webinars to complete your continuing education credits not only for this year, but also for next year or even the next two years? Have you ever found yourself appreciating how very long it takes Congress to actually pass a bill and wish that it had taken its time passing a bill?

In December of 2019, just before the new year started, the long-awaited Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) passed. Everyone in the retirement plan industry started the new year with

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anticipation surrounding the SECURE Act. We were planning and designing our client communications. We developed our slides for our webinars that we would begin marketing to our clients and our referral sources. We sat in webinars and soaked in all of the new rules and regulations. Then, just as we were ready to launch our communications and schedule our events, the world turned upside down and changed our plans. In fact, it may have changed our industry forever. We entered the "new norm" of a world forever impacted by a pandemic, and, overnight, we had to change the way we did business. We suddenly had to become entirely remote work forces. Our teams were separated to work from home, and we had no idea when we would all be together again.

There are always challenges in a third-party administrator (TPA) firm. It seems like we always have to come up with new and better ways to help our clients stay compliant. We have to figure out new ways to market our firms, stay relevant, and add value. The Covid-19 pandemic and the Coronavirus Aid, Relief, and Economic Security (CARES) Act may have presented one of our greatest challenges since daily recordkeeping and participant direction of investments were introduced in the 90s. In January, we were worried about multiple employer plans (MEPs) and Pooled Employer Plans (PEPs). By March, we were trying to learn how to use Zoom, and worried about how we were going to continue marketing and making sales all while working from home and homeschooling our children.

The Covid-19 pandemic presented our industry with new and unusual challenges. It also brought old challenges to light and required us to address them immediately rather than postponing them as originally intended until the end of next busy season or even the end of the busy season after that.

Challenge #1: Making Your Workforce Entirely Remote in 24 Hours … and Then What?

Many of us have struggled over the years to find great talent. Many of us have contemplated hiring remote employees. Some of us have avoided it. Fortunately, my firm was faced with losing an excellent employee two years ago when her husband had to relocate to Kansas City for his residency in medical school. We either had to let her go and start over from square one with a new hire or embrace technology and have our first remote employee. We made the choice to embrace technology.

One year later, we hired our second permanent remote employee. We were in need of someone to be our Director of Compliance so that I could focus on sales and marketing. This meant that we needed someone with a lot of experience and knowledge that we could trust to work independently and manage a team. I don't know if you have ever been to Oklahoma, but there are not a lot of qualified retirement plan individuals living in Oklahoma and looking for a new job. Therefore, we decided that we would look more broadly for the talent and experience we needed even if it meant that they would have to work remotely. This was a huge step forward for us and a leap of faith. The first person we hired didn't stay long. She had never worked remotely before and she wasn't a good remote employee or a good team manager. She was a hiring failure on my part. The second person we found was a perfect fit. However, we went about our hiring search in a completely different way and learned from our previous mistakes.

I am part of a roundtable group comprised of what I consider to be brilliant TPA business owners. We used to meet via conference call once a month to discuss different challenges and opportunities that we all face as owners of a TPA firm. Since Covid-19, we meet virtually using Zoom (we finally figured out that we could all see each other on Zoom, and that was a lot better than a conference call) once a week. I would not have survived the spring without them. If you don't have a group like this, you should find one. Not only have they helped me through the pandemic, but they also helped me figure out how to employ remote employees, hire remote employees, and build a relationship with remote employees. Most of us have at least one permanently remote employee. A couple of members of our group had no remote employees and weren't technologically ready for the remote work that would become necessary during the pandemic. It was a huge challenge for them to become fully remote overnight and, in some cases, they had to spend a lot of money on technology to make it happen. This occurred during a time when none of us was sure if we should be spending any money at all.

Those of us who had considered remote work previously (including our firm) devoted a lot of time and money to make sure that we have the proper technology and security in place to support remote workers. We did not know at the time that, very shortly, the world would change dramatically overnight with no warning and almost everyone in our industry would be using that technology for their whole firm! Those

of us who unfortunately chose to resist having remote employees found themselves competing with similar organizations to immediately buy new equipment, install software, and race to put the proper security and procedures in place to protect data.

It appears that we have all learned (potentially the hard way) that having remote employees is possible. However, there are new challenges and possible fallout that come with that advancement. Many of our team members have realized that they can be a good remote employee, and they really like it. I know a colleague whose entire team wants to remain remote. Their daily commute to the office can be up to an hour each way. I have one team member who was not remote, but who now wants to keep working remotely, even though she lives around the corner from my brick and mortar office building. Liking remote work may be tied to proximity to the office or may have more to do with the worker's personality. I had not considered this before, but I think many of us will be facing this choice once everything goes back to normal. I am starting to consider how those negotiations with employees will move forward.

The next challenge that arises if all of your team wants to remain remote is what to do with your office space. Many TPA firms have large amounts of office space. There are leases to be considered and perhaps negotiated. I, on the other hand, own my own building. Getting out of a lease is not an option. I also know myself well enough to know that I make a terrible remote employee, so working from home is something I do not want to embrace. What will I do with a large office building if no one else works in it with me? These are all things to be considered as we move forward. Right now, I am in no rush to make our previously non-remote employees move back into the office immediately.

If you were not previously a remote shop, there are things that you should go back and consider now as things calm down a bit. First, you need to make sure that you have the proper security in place to protect yourself, your firm, and your data. We had a cybersecurity audit performed by our IT firm to test our security, show us where there was potential risk, and offer us solutions to get rid of the risk. Make sure that you have a remote worker policy in place, as well as a remote worker employment agreement. Review your cybersecurity policy and insurance. Decide whether you will provide the computers or if having equipment will be your employees' responsibility. We provide the hardware to our workers so that we can ensure that the rules we make are followed and that we can lock down computer access if needed to avoid potential risks. We have decided that all future computers purchased will be laptops, so that all in the firm will have the ability to go remote at the drop of a hat. This means that the company must either make a plan to work on the cloud or maintain a remote server and determine how your staff will get to the data that they need.

If you found yourself unprepared for the changes that occurred, even if you don't want to have permanent remote employees, at least consider these things and have them in place the next time they are needed. I consider it part of my emergency/disaster plan now.

Challenge #2: The CARES Act

The pandemic led to abrupt changes in our industry, the stock market crash, having to learn how to work from home, starting to home school our children, being in quarantine with our family, never leaving our house except for essential items such as groceries, and trying somehow to stay sane. Within two weeks, the CARES Act was signed into law on Friday, March 27, 2020. It was perhaps the fastest bill in current memory to pass through both houses of Congress and be signed by the President. Over the weekend, we all rushed to read the law's retirement provisions, learn them, and begin planning our communications campaign. There were only four provisions in the law that affected retirement plans. This should be simple, right? These four tiny provisions have caused more confusion than laws that have passed overhauling our industry. I have spent more time on webinars in the past few weeks than in whole years. It seemed as though every day something new would come up. Every day there was a change in the interpretation of the rule, and Congress was nice enough to build flexibility into the law, permitting certain expansions (such as in the definition of Qualified Individual) to be made by the Treasury or Labor Departments. As a result, every day, we wait to see if such modifications have come to pass.

The first challenge related to the CARES Act was trying to develop understandable communications for our clients. The first problem we had to overcome was that the new permissive advantages under the law were available only to certain participants. Hours of continuing education were devoted to interpreting who constitutes a Qualified Individual, that is, someone who has access to CARES' liberalized distribution and loan provisions. The press was misinterpreting

and incorrectly reporting on these issues. According to the news, it sounded like anyone with money in a retirement plan was able to take out 100 percent of his or her account balance up to $100,000. In truth, it was clear that all of the provisions were optional and did not have to be adopted by every plan sponsor. It also became clear to me that these rules should not be adopted for a plan, in my opinion, unless they were mandatory, because they were a protected benefit (so once adopted, could not be removed).

Just as we were able to wrap our arms around the basics of the law sufficiently to communicate them to our clients, each of the major recordkeepers in our industry made decisions regarding how they would address the provisions and their fees (and sometimes ours) for taking advantage of those provisions. Most of them made these decisions based on their legal counsel's interpretation of the law, but even more importantly, without collaborating with the TPAs with which they work. To make matters worse, it seemed as though no two recordkeepers addressed it the same way. In their defense, I and most TPAs understand why they did it. Like us, they wanted to help participants who needed their money access it as quickly as possible. They were racing to make decisions, create forms, put procedures in place and sometimes even institute changes to their recordkeeping systems overnight. However, decisions they made in haste dramatically affected our practices and preempted our approach to assisting our clients to make informed decisions about whether to add the CARES Act provisions to their plan.

Some recordkeepers assumed the plan sponsors wanted to adopt the CARES provisions and instituted them unless the sponsor affirmatively opted out. Some of them did not institute the CARES procedures unless the plan sponsors adopted them. Some recordkeepers waived their fees and the fees of the TPAs for distributions and loans. Some of them didn't. Some gave TPAs 48 hours to notify them if their client didn't want to be opted into the CARES Act provisions, forcing TPAs to rush to contact their clients and to help them make decisions. Some didn't notify the TPAs and just waited for us to find out that they had been opted in.

We had just sent our first communication to our clients explaining the CARES Act and making sure that they knew that it was not an emergency. They had time to consider their choices. We were scheduling phone calls with any of them who had questions or wanted to talk through their choices. Nothing in the law required plan sponsors to act immediately, and they could take care of the other pressing issues on their plates. Two hours later, we received the first notification from a recordkeeper that, 48 hours from that time, it would be opting all of our mutual clients into the CARES Act provisions unless it was told differently. We had two days to contact every client with that recordkeeper, explain the CARES Act, determine if the sponsor even had any qualified individuals, and notify the recordkeeper of the ultimate decision.

Every TPA firm and its clients are unique. Each of us experienced the spread of Covid-19 and the financial devastation caused by it differently, often based on our locations. For instance, in Oklahoma, we still have only had 5,960 confirmed cases of COVID and slightly over 300 deaths as of this writing. This pales in comparison to the devastation experienced on both the East and West coasts. As a smaller sized local firm, we were able to reach out personally to many of our clients to discuss whether they should adopt the CARES Act provisions. This also gave us the opportunity to check on them and see how they were doing. Surprisingly, over 90 percent of the clients to whom I spoke did not adopt the provisions, because they did not have any employees who would be a qualified individual. However, my friends who own TPA firms in other regions of the country did not have the same experience. For our clients, it was important that they not be opted into provisions that they didn't need, especially since we could not take them back out.

In an effort to be helpful to the participants, the recordkeepers also waived their fees for COVID-related transactions and hardship distributions. We thought this was very generous of them. There was also no requirement of participant notice in the CARES Act. Plans do not have to be amended until 2022. We understood that, if a client adopted the CARES Act provisions, it should give a notice to the participants, explaining the provisions that had been adopted even though it was not required to do so. It soon dawned on us that, for our safe harbor plans that adopted the CARES Act, we also had to give the participants an amended Safe Harbor notice for the year. However, we could combine the two notices into one, and lucky for us, very few of our clients had opted to amend their plan at all. Then, on one of our webinars that covered questions related to the CARES Act, the surprise came. The ball dropped. A very knowledgeable, well-known, and respected ERISA attorney advised that, even the fee actions taken by the recordkeepers (and perhaps the TPAs) represented a reduction in charges,

so an amended fee disclosure was required to be provided to participants. He even quoted the line from the regulation that made it so.

We realized very quickly that this news wasn't as bad as it first sounded. We could include the revised fee disclosure with the summary of material modifications/amended safe harbor notice being prepared … and, again, very few of our clients opted to adopt the CARES rules. Then, the second shoe dropped. The recordkeepers had waived their loan and hardship distribution fees even for amounts that were not COVID-related. This meant that we had to prepare and distribute an amended fee disclosure for almost every client, whether or not it opted to make changes for the CARES Act.

Luckily, we have a great client management system and an employee who is a whiz at mail merge. But, we still needed to accurately track what the clients had decided, as well as what each individual recordkeeper had done both for automatically opting people in or out and waiving or not waiving fees. We also faced the challenge of required notices based on other regulations and not by CARES.

The key to meeting these challenges was our client management system. Within a week, through collaboration with members of my roundtable group that use the same software, as well as the software developer, we were able to use that software to track what each of our clients had decided and adopted, as well as additional amendments that they had requested be done in addition to CARES. We were able to send required notices out within a day or two of learning that they were required, and in 2022, when we have to amend the plans, it will be easy for us to track what amendments need to be completed.

Challenge #3: How on Earth Does Zoom Work?

My marketing manager has been after me for years to do more video meetings, webinars, and LinkedIn posts containing video. I always avoided it. I never had time and it was a very low priority. A year ago, I even bought all of the equipment. Unfortunately, it has been sitting in the corner of my office for a very long time collecting dust. I have a ring light, a tripod, a microphone, and a lapel mic. I have everything I need to be a "vlogger," as my daughter calls it. I just never could pull the trigger. What on earth was I going to talk about that anyone would be interested in? I had never even used Zoom other than for our weekly team meetings with our remote employees. I certainly hadn't ever done a Zoom video meeting with a client or an advisor.

Then there was COVID. Suddenly, I found myself wanting to see people. Any people. I wanted to see their faces when I talked to them. I wanted to be able to see their expressions and get a better idea for how they were really doing. I logged into Zoom and started trying to figure it out.

The first thing we determined was that we needed to go ahead and spend the extra money to have two accounts, instead of one. With one account, my office manager had to schedule all of my meetings. Then she had to log into the meetings to start them, and every time I logged into the meeting, my video picture said I was her. We tried just changing the name on the account to me. However, that limited who could schedule the meetings, and every time she logged into a meeting, it said she was me. It took us a little while to figure out how to add an extra user. Zoom doesn't have an 800 number you can call for help. However, we finally managed it and we were off to the races.

The next challenge I faced was lighting. I discovered that the lighting in my office was horrible for Zoom calls. However, I was in luck. I already had a ring light. It worked perfectly. I found that there was an art to having a good video conference. We began asking all our clients if they would mind doing a video conference instead of a conference call. At first, some of them were hesitant. However, as the quarantine wore on, many of them began enjoying it as much as we did. It was nice to be able to see the faces of clients that we don't normally get to see in person. It was nice to see them in their own environments, and many of them seemed more comfortable and willing to share on a personal level. We were able to make connections with people in a whole new way, and we believe it built deeper, more personal bonds with our clients.

Video conferencing also allowed us to build deeper bonds with our team. Instead of meeting once a week, we began meeting daily, because so many of us were working remotely now. We would do a video conference for thirty minutes at the end of each day, and share our experiences—both personally and at work. Everyone has shared that they want it to continue and feel like it has brought us closer as a team.

I was always hesitant to do video meetings. However, through this, I have found many tools to learn more about video conferencing and how to make them better. Several marketing companies that work specifically in the financial advisor and retirement plan industry have had free webinars on how to improve

virtual meetings. I have been amazed by the people in our industry who have been more than happy to share their talents with other.

If you haven't fully embraced virtual meetings, look into it. I think that, although many of us are tired of virtual meetings right now (because we have been on so many), video meetings are here to stay. Our office will continue communicating with our clients and our advisors using video. It brings people closer. It also makes reaching more people at once so much easier. I have finally even completed my first webinar.

Challenge #4: How on Earth Do We Keep Our Sanity?

The retirement plan industry can be tough and stressful in normal times. There are always challenges we have to face like deadlines, changing rules, notice preparation, plan error corrections, and the list just keeps going on. There are many days when we feel like we will lose our sanity, even when there is not a pandemic.

Once the pandemic started, we now have to worry about the same issues as before, plus the new legislation, the economy and its impact on our clients and on us, would our clients be able to pay us, how do we manage a remote workforce if we never had before, and the like. To top it off, we were all quarantined and had no outlet for our stress. We couldn't go to the gym. We couldn't go out with our friends. There was no end in sight, and every time the news came on the TV, it was doom and gloom.

I have said it before and I will say it again. If you don't already belong to a roundtable or some group of friends in this industry, you should try to find one. The only thing that kept me sane was looking forward to weekly video chats with other people in our industry who were facing the same thing I was. It was amazing to be able to talk to people who understand our industry and about the unique challenges we have faced. My poor husband tried really hard to understand what I was talking about when I was so stressed about the CARES Act. However, he didn't truly understand. The groups of other business owners in this industry with whom I had the pleasure of weekly conversations were all on the same page, and sharing our concerns helped lift all our burdens a lot.

In the end analysis, you need a support system for business, just like you do for your personal life. And, the congeniality that exists in our industry is the perfect yeast to grow those relationships.

Conclusion

Wait, there's more! This is only the first part of my list of changes that have occurred or that we have had to make. Check out our column in the next issue for the rest! ■