



Merrill Lynch
Wealth Management



PERKINS & CO

Tips for Employers with Retirement Plans

Protect yourself & your company

Thank you for joining us today! You will hear from several experts from Davis Wright Tremaine LLP, Perkins & Co, and Merrill Lynch at this complimentary interactive seminar. Practical tips will be shared on how to protect yourself and your company from exposure to ERISA lawsuits by participants, avoid liability to the DOL and IRS, and learn best practices for plan design, investment management, and participant support.

Topics include:

- Know your fiduciary responsibilities
- Operational compliance
- Best practices for trustees

Attendees Include: In-house benefit managers, HR professionals, CFOs, business owners, and anyone who has responsibility with regard to an employer's 401(k) or other type of retirement plan.

Date: Tuesday, October 4, 2011

7:30 - 8:00 a.m. Registration & hosted breakfast

8:00 - 9:00 a.m. Program

Location: University Club, 1225 SW 6th Avenue, Portland, OR. Validated parking will be available in the Pacwest Center

Program qualifies for CPE for Oregon CPAs


Tips for Employers with Retirement Plans



Today's Topics
Know your fiduciary responsibilities
Operational Compliance
401(k) Best Practices



Today's Speakers
Chrys A. Martin, Davis Wright Tremaine LLP
Pati J. Schmitt, Perkins & Co
Brett Fisher, Floberg / Fisher Group
Oliver, Collins / Drew group
Steve Groth, Shafer / Groth group



Know Your Fiduciary Responsibilities



*Presented by:
Chrys A. Martin of*



A law firm devoted to helping our clients achieve success as they define it by providing service customized to their particular needs.

Davis Wright Tremaine. Defining Success Together.

What Every Employer Should Know About ERISA



- **Terms**
 - Plan Sponsor: You are one
 - Trustees: You need them
 - Fiduciaries: The Employer and Trustees are Fiduciaries
 - Administrative Committee: Trustees Serve



What Every Employer Should Know About ERISA (con't)



- **Fiduciary Duties**
 - Loyalty
 - Prohibited transactions
 - Gifts/gratuities/business entertainment – spouses also included in prohibition
 - Prudence
 - Diversification



What Every Employer Should Know About ERISA (con't)



- **Liability**
 - Personal
 - Co-fiduciary Liability
 - Insurance
 - ERISA Bond



Minimizing Liability



- **Delegate to Experts**
 - Investment Manager
 - Investment Monitor
 - Accountant
 - Plan Attorney
 - Third Party Administrator (TPA)




Minimizing Liability (con't)




- **Investment Guidelines**
 - Establish Guidelines
 - Monitor Compliance
- **How to monitor**
 - Reports – review and assess
 - Hire investment monitor
 - Accountant
 - Attorney



Minimizing Liability (con't) 

- **Regular Meetings**
 - Review Guidelines, Service Provider Conduct, Plan Terms
 - Minutes: Document Decisions



Minimizing Liability (con't) 

- **Avoid Appearance of Impropriety**
 - Code of Ethics
 - No Gifts or Entertainment
 - Recusal from Conflicts



Thank You

Presented by:
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Operational Compliance



*Presented by:
Pati J. Schmitt of*



PERKINS & CO
Let's get there





Operational Compliance

- Plan Documentation
- Improper Forfeiture Suspense Accounts
- Expense disclosure regulations
- Remittance of participant contributions
- Compliance with the Plan document






Plan Documentation



- Adopt amendments
- Sign the documents
- Date the documents

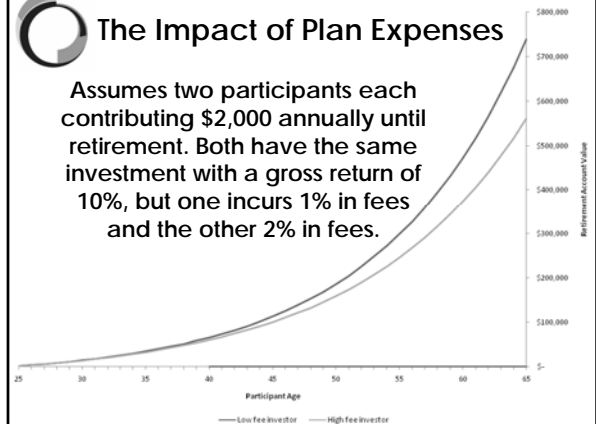
Forfeiture Suspense Accounts

- What does the plan say?
-Get clarity
- Use it annually
- Caution – new service provider




The Impact of Plan Expenses


Assumes two participants each contributing \$2,000 annually until retirement. Both have the same investment with a gross return of 10%, but one incurs 1% in fees and the other 2% in fees.



Participant Age	Low Fee Investor	High Fee Investor
25	\$0	\$0
30	\$10,000	\$8,000
35	\$20,000	\$15,000
40	\$40,000	\$28,000
45	\$80,000	\$55,000
50	\$160,000	\$110,000
55	\$320,000	\$220,000
60	\$640,000	\$440,000
65	\$1,280,000	\$880,000

Three prong approach to enhancing transparency...




 **1. Disclosure of information to the public and the government**


- Revised the 2009 Schedule C
- Direct, eligible direct & other indirect
- Early indicators – lack of complete disclosures

 **2. Disclosures by service providers**

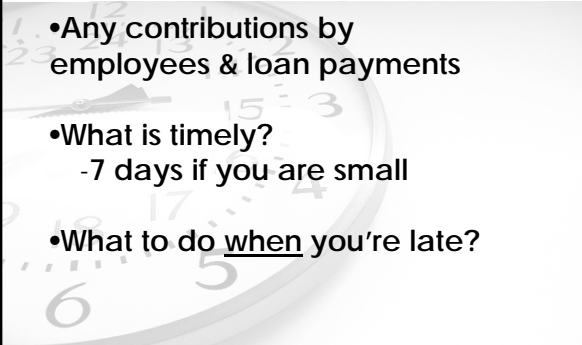
- Specific information to be provided
- Plan sponsor responsibilities
 - Ensure timely receipt of information
 - Notify DOL of failure to provide
 - No action = breach of fiduciary duty


 **3. Disclosure to plan participants**

- New annual disclosures
 - General plan provisions
 - Expenses – what & how charged
 - Investment related information
 - Substantial
- New quarterly disclosures
 - Fees actually charged
 - Act reasonably & in good faith


 **Timely Remittances**

- Any contributions by employees & loan payments
- What is timely?
-7 days if you are small
- What to do when you're late?



 **Compliance with the Plan Document**

- Compensation errors
- Eligibility
- Participant Loans
- Hardships



Thank You

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 **PERKINS & CO**
Let's get there






Merrill Lynch – Portland, OR

Oliver Collins, CRPS® First Vice President	Jane Drew First Vice President
Brett A. Fisher, CFP® Senior Financial Advisor	Matthew R. Floberg, CRPC® Financial Advisor
Stephen Groth, CIMA® Senior Vice President	Mark Shafer, CFP® First Vice President

Merrill Lynch
Wealth Management
Bank of America Corporation

Plan Sponsor Support

Helping Trustees with their Fiduciary Responsibilities



Unique Advisor Perspective

- Navigating retirement plan types and evaluating plan providers

Helping to Act Prudently


- DOL: "Prudence focuses on the process for making fiduciary decisions"
- Document process, decisions and actions

Scheduling Fiduciary Reviews

- Understanding participant demographics, behaviors and education
- Monitoring investment performance
- Examining plan expenses and determining reasonableness of expenses

Keeping Current and Integrating Best Practices


- Legislative and regulatory updates
- New developments in the 401(k)/retirement plan industry



Retirement Savings

401(k) Participant Support

"The Importance of 401(k) Retirement Savings"



"Make it Easy"

Establish the Need

Responsibility has shifted

Simplify Enrollment

How Much - Deferral Calculator
How to Invest - Lifestyle / Target Date Funds
Automatic Enrollment

Incentivize

Company Match


Personalize

One on One Meetings
Financial Planning


Bank of America Corporation



Investment Selection Process

Investment Selection Process 

Globally Diversified Portfolio

- Target Date Funds
- Lifestyle Funds

Open Architecture

- Best of Class Investment Options
- No Proprietary Requirements

Default Investment Options

Fee Transparency


Bank of America Corporation



To reach a Merrill Lynch 401(k) Designated Team:

Please call (503) 221-4700

TIPS FOR EMPLOYERS WITH RETIREMENT PLANS

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WHAT EVERY EMPLOYER SHOULD KNOW ABOUT ERISA

TERMS

- **Plan Sponsor: You are one**
- **Trustee: You need them**
- **Fiduciary: The Employer and Trustees are Fiduciaries**
- **Administrative Committee – Trustees Serve**

FIDUCIARY DUTIES

- **Loyalty**

- Prohibited transactions
- Gifts/gratuities/business entertainment – spouses also included in prohibition
- **Prudence**
- **Diversification**

LIABILITY

- **Personal**
- **Co-fiduciary Liability**
- **Insurance**

MINIMIZING LIABILITY

DELEGATE TO EXPERTS – BUT KNOW THE BOUNDARIES OF THEIR JOB VS. THEIR VENDORS' JOBS. DELEGATE CAREFULLY.

- **Investment Manager**
- **Investment Monitor**
- **Accountant**
- **Plan Attorney**

Delegation to an investment manager or monitor does not relieve the trustee from his or her fiduciary obligations to the plan participants. The trustee retains the duty to monitor the conduct of the investment manager and other service providers. Accountants, plan counsel and investment monitors can help ensure monitoring is done correctly.

INVESTMENT GUIDELINES

- **Establish Guidelines**

Establish investment guidelines which reflect prudence and diversification; obtain investment manager's written agreement to comply with guidelines.
- **Monitor Compliance**

Monitor investments to ensure that they comply with guidelines. Periodically review guidelines to confirm that they remain appropriate with respect to prudence and diversification. Review manager performance and selections for compliance with the guidelines.

- **How to monitor:**
 - Reports – review and assess
 - Hire investment monitor
 - Accountant
 - Attorney

REGULAR MEETINGS

- **Review Guidelines, Service Provider Conduct, Plan Terms**

Have regular meetings at which investments are reviewed for prudence, compliance with guidelines. Review and discuss services provided by other plan providers (i.e. attorneys, accountants, administrators, etc). Make decisions in accordance with plan provisions.

Before hiring service provider, solicit requests for proposal – send out to bid

- **Minutes – Document Decisions**

Keep detailed minutes to document decisions, memorialize trustees' deliberations and review.

AVOID APPEARANCE OF IMPROPRIETY

- **Code of Ethics**

Trustees should develop a code of ethics to provide guidance as to what they can and cannot do consistent with their fiduciary responsibility and duty of loyalty

- **No Gifts or Entertainment**

Zero tolerance allowed

- **Recusal from Conflicts**

A trustee who may appear to benefit from a decision by the board of trustees should recuse himself on the record from the decision and declare the nature of the conflict.

**James F. (Jim) Ambrose****Partner | Portland****503.778.5420, jimambrose@dwt.com**

A key focus of Jim's practice is designing, implementing and consulting in the area of qualified pension and profit-sharing plans. In that area of practice his expertise includes 401(k) and employee stock ownership plans, defined benefit plans, cross-tested and age-based retirement plans, welfare plans and nonqualified deferred compensation programs. Jim also serves as general counsel and tax counsel for many closely held companies in the areas of business formation, personal service contracts, financing, business succession planning and tax planning. Jim is an occasional speaker at local and statewide meetings regarding qualified retirement plans and taxation of fringe benefits.

Jim is licensed in Oregon and California. He received his J.D., cum laude, from Loyola Law School and his B.A., cum laude, from the University of Notre Dame.

**Stuart C. Harris****Partner | Portland****503.778.5428, stuartharris@dwt.com**

Stuart counsels clients on a wide range of employee benefits issues, including the design and administration of qualified retirement plans, nonqualified deferred compensation arrangements, executive compensation programs, and health/welfare plans. Areas of particular expertise include 401(k) plans, ESOPs, and stock option plans, as well as group health and cafeteria plans. Stuart's work includes advice on the tax and ERISA implications (including COBRA rules) of all types of employee benefit programs.

Stuart is licensed in Oregon and Washington. He received his J.D., cum laude, from Cornell Law School and his B.A. from Brigham Young University.

**Chrys Martin****Partner | Portland****503.778.5357, chrismartin@dwt.com**

Chrys has been involved in employee benefits litigation on behalf of fiduciaries, insurers, plans and employers for her almost 30-year legal career and also is an employment lawyer. She currently writes health benefit plan language, consults with fiduciaries and serves as an arbitrator in ERISA claims disputes for the American Arbitration Association. She co-lead the successful team that recovered over 70% of the losses for clients in the Capital Consultant's litigation, which at that time was called by the SEC, the largest investment manager fraud case in U.S. history.

Chrys received her J.D., cum laude, from Lewis & Clark Law School and her B.A. with honors from Oregon State University.

**Marisa Meltebeke****Associate | Seattle/Portland****206.757.8027, marisameltebeke@dwt.com**

Marisa brings a strong educational background to her practice at the firm having earned an LL.M. in taxation from the University of Washington School of Law. Her legal experience includes coordinating court proceedings and handling a range of research, legal briefs, and court documents. Marisa has also prepared and modified business agreements.

Marisa received her LL.M. in taxation and her J.D. from the University of Washington School of Law. She also received a B.A. in history and a B.S. in political science from Oregon State University.

ABOUT DAVIS WRIGHT TREMAINE

Davis Wright Tremaine LLP (Davis Wright) is an international full-service law firm representing clients located in the United States and around the world. Our team includes more than 500 attorneys in nine offices, covering a variety of practice areas with strong substantive teams in areas such as business transactions, litigation, employment, employee benefits, banking, real estate, environmental, tax, health care, corporate finance, and M&A. The firm was founded in Seattle in 1908 on a simple guiding principle—to provide clients with quality legal services in a manner that would exceed their expectations.

ABOUT OUR EMPLOYEE BENEFITS PRACTICE

The area of employee benefits has become increasingly complex, with no indication that the trend will slow down or reverse. As a result, employers face constantly changing, highly technical laws, with more at stake than ever before. Given the increased incidence of major litigation involving employee benefits, companies need a knowledgeable, collaborative team of attorneys whose collective expertise covers the range of employee benefit issues.

Davis Wright has one of the largest and most experienced employee benefits teams in the Pacific Northwest. We have worked with companies of all sizes and dealt with virtually every conceivable benefits issue. We also recognize that clients may have unique needs that require a customized approach.

Our team has deep experience in all aspects of employee benefits including:

Employee Benefits

- **Compliance counsel**—advising on how best to satisfy tax, labor, employment, PBGC, SEC and ERISA rules, including ERISA reporting and disclosure requirements
- **ERISA litigation**—defending (and occasionally initiating) ERISA litigation, advising clients on litigation risks and handling administrative enforcement activities
- **Plan administration and correction**—helping clients interpret and administer plans and, if necessary, correcting problems using IRS and DOL correction programs
- **Fiduciary counseling and plan termination guidance**—counseling employers, plan trustees and others about fiduciary responsibility, prohibited transactions, unrelated business income, mergers and transfers of plan assets, plan termination and multi-employer plan issues, including withdrawal liability

Retirement Plans

- **Benefit program design**—identifying the greatest tax advantages, taking advantage of cross-testing and integration with Social Security, analyzing the compatibility of different plans
- **Plan drafting**—creating both individually designed and IRS-pre-approved plan documents that satisfy requirements for qualified retirement plans
- **Plan qualification**—overseeing and managing the process of obtaining IRS favorable determination letters for qualified retirement plans

Health & Welfare Plans

- **Flexible benefit and group health plans**—designing flexible benefit (cafeteria) and group health plans and helping clients administer them, including compliance with COBRA and HIPAA rules

Executive Compensation

- **Equity compensation**—drafting and advising on stock-based plans that provide for both incentive and nonstatutory (nonqualified) stock options, stock appreciation rights plans and outright stock bonus grants; analyzing and advising on tax consequences; submitting related state or federal securities law filings
- **Nonqualified deferred compensation**—drafting and advising on the structure and tax ramifications of arrangements that defer compensation; analyzing compliance under Tax Code Section 409A

For More Information

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Protect Your Employees. Protect Yourself.

EMPLOYEE BENEFIT PLAN AUDITS

An annual audit of your employee benefit plan is a must. Not only is it federal law, but it also serves to protect your greatest assets, and that includes your employees. Audits can catch inappropriate asset use and operational problems that could result in significant penalties, and maybe even plan disqualification. Our employees are important to us, and we know you feel the same. The last thing we want is for you to have to explain to your workers that their benefits are gone. Our Employee Benefit Plan Audit group audits over 60 benefit plans a year. We're members of the AICPA's Employee Benefit Plan Audit Quality Center, giving us access to best practices and the most up-to-date information. Our experience, dedication and network give you, and your employees peace of mind.

Why Choose Perkins & Co?

We believe that Perkins & Co is one of a small number of firms who use a specialized benefit plan audit team. Pati Schmitt, the director of our audit practice, heads the employee benefit plan audit practice and is the primary partner for all benefit plan audits.

Our team audits more than 60 employee benefit plans annually. Their familiarity and experience allows us to audit plans as efficiently and thoroughly as possible. Clients also tell us they appreciate not having to "train" audit teams or answer endless questions from inexperienced staff. Our team approach also helps assure benefit manager clients that their audit will be well organized and consistent from year to year.

The employee benefit plan audit team keeps up-to-date with the latest economic, regulatory and professional developments through professional publications, training courses, and attending the annual AICPA National Conference on Employee Benefit Plans.

Perkins' Employee Benefit Plan Audit Team

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Grant Jones, CPA 503.221.7503	Shareholder gjones@perkinsaccounting.com
Jared Holum, CPA 503.221.7581	Shareholder jholum@perkinsaccounting.com
Jennifer Elder, CPA 503.221.7520	Senior Manager jelder@perkinsaccounting.com

AICPA Employee Benefit Plan Audit Quality Center

Perkins & Co is a member of the AICPA's Employee Benefit Plans Audit Quality Center (EBPAQC). This organization brings together firms committed to audit quality, provides resources to those firms, and raises awareness about the importance of employee benefit plan audits.

EBPAQC members have access to best practices, guidelines, and tools focused on quality improvement. This membership holds us to the highest standards of compliance and peer review, including designating a partner responsible for the employee benefit plan practice, establishing firm-wide training and quality control programs, performing annual internal inspection procedures, and making the firm's peer review findings publicly available.



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PERKINS & CO

www.perkinsaccounting.com

At Perkins & Co, our accountants are wickedly smart and our entrepreneurial approach to business is anything but boring. Once a small start-up ourselves, we have grown into **Portland's largest locally based accounting firm**. Since 1986, we've been providing accounting and business solutions for Northwest businesses, offering the scope and depth of national firms, with the high touch and personal attention of a local firm. But no matter how large our staff and list of services become, we will forever maintain our small firm service approach and our "less boring" attitude.

In the end, our smarts really boil down to one thing: service. To make a personal connection and to be there for each and every client as a trusted business advisor. We believe compliance is only the beginning and the power in partnering with Perkins comes in identifying areas that we can work together to improve or to grow. By really getting to know you and your business, and by listening to your goals, we can put our expertise to use in getting you wherever 'there' is.

Let's get there

Our Clients

Perkins & Co clients include privately held businesses, emerging businesses, family businesses and high net worth individuals, as well as providing consulting services to public companies. We primarily serve the following industries:

- Real Estate & Construction
- Professional & Creative Services
- Technology
- Social Services
- Arts, Entertainment & Recreation
- Manufacturing
- Wholesale & Retail Trade
- Finance & Insurance
- Non-Profits

BDO Seidman Alliance

Although we're a locally based accounting firm, we accommodate our clients' ambitions to expand in Portland, in Oregon, in the United States, or in the world, thanks, in part, to our independent membership in the BDO Seidman Alliance. The alliance provides us with the scope and depth of resources that any local office of a major international firm would maintain, with access to 37 national BDO offices and over 400 alliance offices throughout the United States as well 621 member firm offices in more than 110 countries worldwide that are a part of BDO International.



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Accounting and Auditing:

- Audit, review, and compilation of financial statements
- Development of forecasts and projections
- Employee benefit plan audits
- Expert witness and litigation
- Development of accounting systems

Tax Advisory and Preparation:

- Tax planning and counseling
- Analysis of alternative business decisions
- Mergers and acquisitions
- Reorganization & liquidation counsel
- Cost segregation studies
- Tax return preparation
- Expatriate tax services
- Wealth management
- Incentive stock option planning
- Establishing charitable giving vehicles
- IRS examinations and protests
- Multistate and foreign tax planning
- Section 1031 exchange planning

Management Advisory Services:

- Entity selection and structuring
- Business valuation
- Cash flow projections
- Management information systems
- Business planning
- Compensation packages & benefit plans
- ESOP benefits and implementation
- Management succession planning
- Strategic and marketing planning

Internal Control and SOX 404:

- Section 404 compliance
- Risk and control documentation
- Process flow-charts
- Testing of all key controls
- Recommendations for ongoing monitoring
- Internal audit review program

