When Bad Things Happen to Good Plans

By Joanne Sammer

Communicating honestly, fully and frequently with participants whenever there's bad news can ease their minds and avoid serious legal problems for plan sponsors.

In the life of a retirement plan, it is almost inevitable that a company will have to communicate bad news to participants, such as recordkeeping errors, company stock volatility, plan changes or termination. Events as disparate as an error in plan statements, or the decision to freeze benefits in a defined benefit plan and change to a 401(k) all have the potential to invoke the discomfort or ire of employees.

When such events occur, how well and how often companies communicate the facts can either help diffuse the tension of a bad situation or make that situation worse. At its best, strong and proactive communication can help employees understand what has gone wrong and how the problem will be or has been corrected. At its worst, poor or minimal communication can leave employees worried and uncertain of the plan's future — and this scenario can spell bad news for companies. “Employees are most apt to call the Department of Labor or a lawyer if the company has not taken the time to communicate,” says Penny Howe Gallo, a partner with Gray Cary Ware & Freidenrich LLP in Palo Alto, Calif.

Breaking the News Right, if Not Gently

How a company communicates bad news about retirement plans can have as much impact on employees as the news itself. **Dennis Ackley**, a consultant with benefits consultants Watson Wyatt Worldwide in Dallas, offers nine suggestions to ease this task.

1. Describe the news in a clear and straightforward manner. Don't lie, hide the message, sugarcoat, use jargon, minimize or downplay. Don't make promises about the future that may not hold true. Don't overreact.
2. Explain why the action is being taken.
3. Explain why this action is fair to as many groups as possible. This can help employees accept the situation and the company's approach to addressing the problem even if they do not like it.
4. Involve a high-status messenger in delivering the message. This communicates both the importance of the message and that senior management cares enough to deliver it personally.
5. Deliver the message in a timely manner. Don't let the grapevine or the media communicate the news first.
6. Identify who made the decision and what process was used to do so.
7. Describe the effort that went into the decision.
8. Outline some of the alternatives that were considered and why they were not chosen.
9. Show that the organization cares about employees. Communicate what the company is doing to help affected employees.

Hitting a Bump

Although the form and frequency of communication will depend on each specific situation, companies should have a disaster communication plan in place for retirement plans, according to **Dennis Ackley**, a consultant in the Dallas office of Watson Wyatt Worldwide. “Before the questions come, think about what the answers should be.” Those answers should be well crafted and available to all spokespeople, especially human resources and line managers. Without this guidance, “line managers may informally be asked questions by employees, and those managers may not give the answers the company wants to deliver,” said **Ackley**.

Companies should also be careful about what terms they use to communicate about retirement plans. “Guaranteed investment contract” (GIC) is a good example of a term that means one thing on Wall Street and another on Main Street, said **Ackley**. “Many employees thought these contracts really were guaranteed and were caught by surprise when Executive Life Insurance Co. went under, and many lost the money that was invested in that company's GICs."

The following scenarios are some of the most common problems retirement plans can face.

Recordkeeping problems. Companies may have to explain clerical or administrative errors. For example, if an error turns up in plan records, companies should be sure that they fully comprehend the problem before communicating with employees. A thorough understanding of the problem can enable the company to fully explain the situation and how it was remedied, knowing that additional problems will not surface later and make employees even more uneasy.

Undermining employee faith in the plan is a danger, especially if the recordkeeping fix results in lower-than-expected employee account balances. In these cases, it is important to "make available to employees people who are knowledgeable about the situation to adequately address employee concerns," said Gallo. Reassuring employees may take some time, however. It took one company with a lot of recordkeeping errors in its plan six months to reassure employees that the plan was back on track, she said.

Company stock volatility. Volatile company stock movements can also be worrisome to employees who have put a large chunk of their 401(k) assets there. In these cases, companies should be honest and provide as much information as possible about the situation without running afoul of securities laws. Companies can't provide more information to employees holding company stock in a retirement plan than they would to any other shareholder.

However, it may make sense to issue "a memo from a high-level source, such as the CEO or chairman, urging employees not to be alarmed if company stock is in the temporary doldrums," said Rich Koski, principal and benefit consultant with Buck Consultants, Secaucus, N.J. "Companies can also use this as an opportunity to reinforce the need for a long-term investing focus." However, if the company's stock is tanking and shows few signs of immediate recovery, companies may want to consider discontinuing its use for matching contributions or as an investment option in the 401(k) plan, he said.

Terminating a defined benefit plan. Terminating or freezing benefits in a defined-benefit retirement plan in favor of a new plan, such as a 401(k) or cash balance plan, "is not necessarily bad news to employees because many employees do not understand defined benefit plans anyway," said Koski. In fact, many employees may welcome such an action, particularly if they do not plan to be with the company for their entire careers. Moreover, if the company is terminating or freezing the defined benefit plan for financial reasons, it should communicate that message so employees understand the reasons for the company's action. "If there are good financial reasons for the shift, employees are likely to take it better," said Koski.

Overall, the timing of relevant communication during a plan termination is crucial. It can take nine months or more for participants to receive their final payout under the plan. In the meantime, of course, employees want to know what is happening. "If company representatives are busy handling plan details, employees may not get the information they need and, as a result, may not buy into a new plan once it gets off the ground," said Gallo. To avoid this, companies should provide employees with a timetable for communicating the details of the plan and stick to it. "Employees feel more comfortable knowing when details will be forthcoming," she said.

The Legal Angle

In addition to the inevitable employee-relations issues, companies also have certain legal responsibilities as plan fiduciaries to communicate with employees when something goes wrong. "As a general rule, it is critically important for every company and company official acting as a plan fiduciary to communicate with employees about the plan," said David Barmak, a partner with

Sherman, Meehan, Curtin & Ain in Washington, D.C. “Even if employees may be upset by the news, companies shouldn't use that as an excuse to protect employees by shading the truth.”

From a legal perspective, the litmus test for communication should be: Will someone look back on this communication and say that the company has provided employees with all relevant and pertinent information? If the answer is yes, you're in good shape. “It is almost better to provide too much than too little information,” said Barmak.

Back to Basics

Beyond these specific situations, common sense should be the guiding principle when communicating bad news about retirement plans. “Be consistent in public statements and true to your knowledge of the situation,” said Bonnie Gellas, senior vice president of communications for The Segal Co. in New York. “Tell it like it is, what the company is doing about it, and employees' roles and responsibilities in the situation.”

Whenever possible, deliver these messages personally to see firsthand how employees are reacting to the situation. “These are pocketbook issues,” said Gellas. If employees need more information, she suggests sponsoring brown-bag lunch meetings so employees can meet with company officials and ask questions freely. “Above all, be honest,” she said.

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