

Is there a fiduciary duty to administer a "successful" 401(k) plan?

Inside this issue:

- Think things are bad at your pension plan ranch? 2
- Let's scrap our group Long-Term Disability Insurance Plan! 2
- What happens to defined benefit plans when partners become disabled? 3
- How 401(k)Secure works 4
- The chances of being disabled are more likely than most people think 4

What is 401(k)Secure?

When partners and employees are disabled contributions to their 401(k) plans stop. As a result they can face a catastrophic loss of their retirement assets at age 65 - the very time when payments to them from their disability insurance programs usually end.

401(k)Secure solves this problem by continuing contributions to disabled participants' 401(k) accounts so that their retirement assets will grow just as if they were working. Recently implemented by IBM and White & Case participants, 401(k)Secure solves a significant - and for the most part overlooked - threat to employees' financial security at a de minimus cost.

The answer is "yes" according to attorneys Fred Reish and Bruce Ashton*. They suggest that the legal duties of plan fiduciaries imposed by ERISA can be summarized by one primary responsibility - to operate a successful plan. As they put it:

"By successful we mean a plan that provides ... benefits that enable employees to have a reasonable standard of living in retirement. To achieve this, fiduciaries must ask themselves: what would a prudent and knowledgeable fiduciary do to assist the eligible employees in reaching that goal."

Law Firms are *not* fiduciaries but we think that most of them have a vested interest in operating a "successful" retirement plan - one that will enable their partners to achieve financial independence. Such a plan will have obvious value and it will certainly help them, as employers, in their continuing efforts to attract and retain top talent.

As 401(k) plans and profit sharing have become the primary provider of retirement assets, law firms are introducing more and more benefits to help their plan partici-

pants maximize the value of their plans so that they will be "successful". These benefits include investment advice and guidance, auto-enrollments, auto-deferral increases and managed accounts.

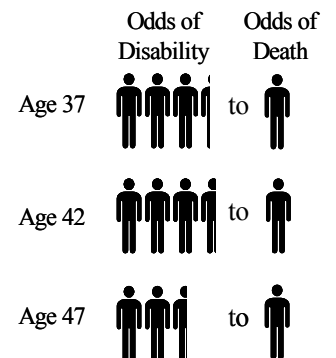
These are valuable benefits but they are completely meaningless to plan participants who become seriously disabled. Their reality is that they will lose their jobs and, their retirement plan contributions will stop. This means that many will experience a catastrophic loss of their savings and investments at age 65 - the very time when payments to them from their disability insurance programs end. As a result most of them will be scrambling for income at a time when their medical expenses are escalating - hardly the retirement they had once dreamed about.

An essential new retirement plan benefit that solves this problem is 401(k)Secure. For just a few dollars a month it guarantees that contributions to your plan participants' retirement plans will continue when they become disabled just as if

they were working. The result is that the disabled plan participants will not be deprived of their retirement benefits simply because they were unlucky enough to get sick or hurt.

Further, since 401(k) Secure will add a significant financial security component to your 401(k) plan, it has the potential to increase both participation and deferral percentages.

**The Fiduciary Duty to Administer A Successful Plan: Ameriprise Retirement Services' BluePrint Design" by Fred Reish and Bruce Ashton at Reish, Lufman, Reicher & Cohen. www.reish.com*



Think things are bad at your DB pension plan ranch?*

- GM's pension plan liability totals \$90 billion.
- The PBG is \$23 billion in the red – and heading north!
- In San Diego pension plan abuse has effectively bankrupted the city.
- A typical GM pension for a worker with 30 years service is \$1,500 a month.
- By 2010 the annual bill to fund the New Jersey pension system will be \$2.5 billion.

*Statistics from *The End of Pensions?* by Roger Lowenstein in the 10/30/05 - New York Times Magazine.

Things that used to kill now disable – in the last 20 years:

<u>Condition</u>	<u>Death</u>	<u>Disability</u>
Hypertension	-73%	+70%
Heart disease	-29%	+44%
Cerebrovascular	-48%	+36%
Diabetes	-27%	+36%

(National Center for Health Statistics, 1999)

None of us have a lease on good health and all of us have the chance of suffering from a devastating illness or being seriously hurt in an accident.

Let's scrap our group Long-Term Disability Insurance Plan!

We were talking with a couple of partners at a large law firm a few weeks ago about 401(k)Secure – our disability component that continues contributions to disabled partners' retirement plan accounts so their assets will grow just as if they were working.

Partner# 1 said, "Hardly anyone around here gets disabled, so what's the point of 401(k)Secure?"

Partner# 2 said, "If no one's getting disabled why don't we just scrap our long term disability insurance plan and save everyone a lot of money!"

Partner# 1 said, "You must be joking – our people would never stand for that!"

We guess the moral is that every major law firm provides their partners with disability income insurance (or makes it available to them). The reason: the chance of becoming disabled during a working lifetime is 350% greater than dying. And if protecting their current income is important, isn't it just as important to protect their retirement income?

How much can be lost when plan participants are disabled?

Totally disabled at age:	Loss of Retirement Assets at age 65 ⁽¹⁾		
	\$16,000 annual contribution	\$42,000 annual contribution	\$70,000 annual contribution ⁽²⁾
35	\$1,957,534	\$5,138,526	\$8,564,211
45	\$ 790,767	\$2,075,763	\$3,459,605
55	\$ 250,328	\$ 657,110	\$1,095,184

(1) At 8% interest—3% salary scale.

(2) Includes contributions to deferred benefit plan.

What happens to defined benefit plans when partners become disabled?

Many firms have both qualified and non-qualified defined benefit plans for the partners. Usually accruals stop in both plans when partners become disabled. The result — the potential for the loss of millions of dollars of retirement assets

The solution: our new *WealthSecure*TM program provides a tax effective funding arrangement to guarantee a continuation of DB benefits for disabled partners.

Example—Age 45

Marcia Valenzi participates in a cash balance plan and her contribution is \$50,000 a year. Assuming a 7.5% funding assumption, she can expect to have \$2,300,000 distribution at age 65. But if she becomes disabled she can lose it all.

The solution: an insured funding arrangement that will guarantee her \$2,300,000 distribution if she becomes disabled.

401(k)Secure — A Case Study

George Klein is a 40-year-old partner in a major law firm. George is contributing \$42,000 a year to his 401k and profit sharing plans and expects to have about \$3,069,000 of incremental assets in his retirement plan account at age 65. Unfortunately his multiple sclerosis is now at the point where he can't work and he becomes permanently disabled. As a result his retirement plan contributions will stop and his \$3 million nest egg will disappear.

George is receiving \$25,000 a month from his disability insurance plan which is replacing almost all of his partnership distributions. However, at a 3% inflation rate, his disability insurance benefits will lose \$2,329,000 in purchasing power over the next 25 years.

Net result of his disability at age 65:

Loss of retirement assets	\$3,069,000
Loss of income	<u>\$2,329,000</u>
Total loss before additional medical costs:	\$5,298,000

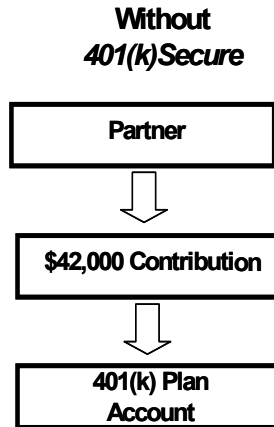
401(k)Secure — plus a COLA benefit in the long term disability plan — solves the problem.

How 401(k)Secure works

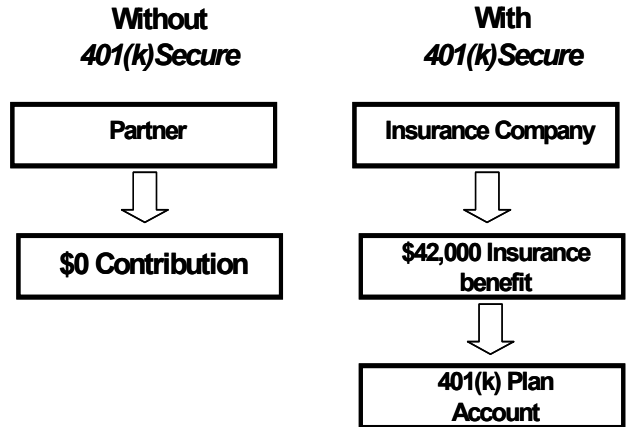
Example: \$42,000 annual 401(k) contribution

The purchase of 401(k)Secure disability insurance is treated as a plan investment. The insurance benefit is payable directly into the disabled employee's 401(k) account as an investment return. Therefore, premiums are paid with pre-tax dollars and the insurance benefits are tax-deferred.*

Before a disability



After a disability



* See PLR's 200031060 and 200235043 and the Groom Law White Paper.

The chances of being disabled are more likely than most people think

- 18.5 million working age individuals are, due to a disability, either prevented from working or limited in the kind or amount of work they are able to do. (*U.S. Census Bureau Americans with Disabilities, P70-73, February 2001*)
- 17% of all Social Security recipients are on disability benefits and 8 million workers in 2004 received Social Security Disability benefits. ("*Disability Insurance Side of Social Security Raises Questions*" by Alan B. Krueger, *The New York Times*, March 03, 2005)
- During the course of a career people are 350% more likely to be injured and need disability insurance than to die and need life insurance. (*Health Insurance Association of America, 2000*)



Visit our website: www.401ksecure.com

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