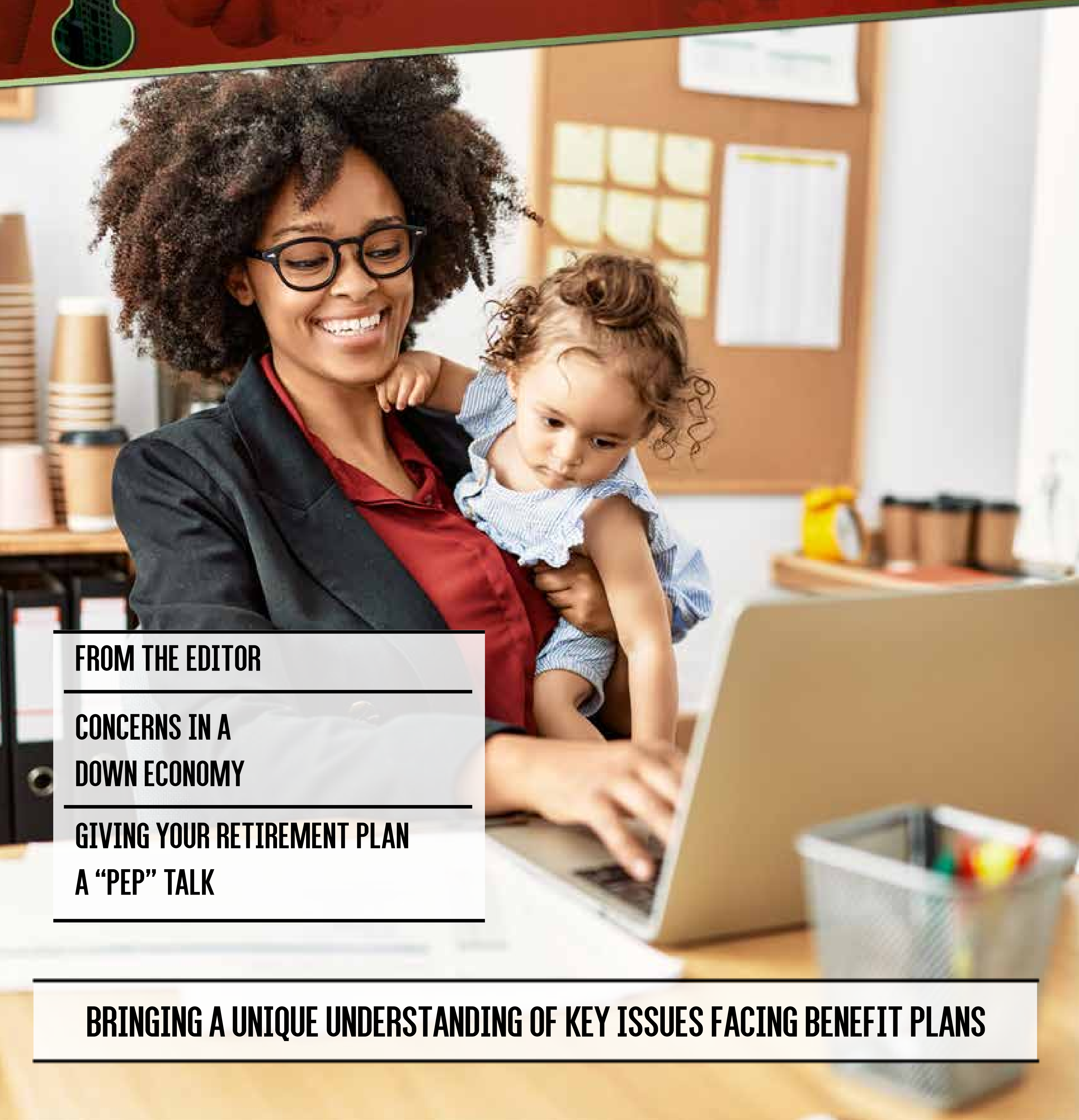
CERINI & ASSOCIATES, LLP | CERTIFIED PUBLIC ACCOUNTANTS
PRESENTS

PENSION PLANNER

VOL. 5
SPRING 2022



FROM THE EDITOR

CONCERNS IN A DOWN ECONOMY

GIVING YOUR RETIREMENT PLAN A “PEP” TALK

BRINGING A UNIQUE UNDERSTANDING OF KEY ISSUES FACING BENEFIT PLANS

EDITOR

TANIA QUIGLEY, CPA
CERINI & ASSOCIATES, LLP
PARTNER, AUDIT

CONTRIBUTORS

WRITERS

TANIA QUIGLEY, CPA
CERINI & ASSOCIATES, LLP
PARTNER, AUDIT

CRYSTAL HARVEY
CERINI & ASSOCIATES, LLP
SUPERVISOR

COURTNEY PRYHOCKI
CERINI & ASSOCIATES, LLP
SENIOR ACCOUNTANT

ASSOCIATE EDITOR

KEN CERINI, CPA, CFP, FABFA
CERINI & ASSOCIATES, LLP
MANAGING PARTNER

PAGE LAYOUT & DESIGN

KRISTINA (LAINO) TORTORICE
CERINI & ASSOCIATES, LLP
GRAPHIC DESIGNER

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

FROM THE EDITOR

Quite often, we are provided with information about updates and regulatory changes for retirement plans. These updates are geared to benefit current and future retirement plan participants by improving accessibility for future financial security of individuals, increasing transparency of retirement plan reporting, and ensuring there is proper oversight of the maintenance and operations of retirement plans. With this comes the responsibility of ensuring your retirement plan is up to date and compliant with regulatory changes and ensuring your employees are properly set up on a path for financial security when it comes time for retirement. Some of the new things you should be aware of are:

NEW AUDITING STANDARDS IN EFFECT:

- We covered **Statement on Auditing Standards ("SAS")** 136 Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA in our volume 3 newsletter (**Read it here**), but it's worth bringing up again because of the significant changes to employee benefit plan audits that are occurring in 2022 for 2021 plan year ends and beyond. Some key highlights to SAS 136 include:
  - The type of audit name has change from a limited scope audit to an ERISA Section 103(a)(3)(c) audit;
  - There are significant changes to the independent auditor's report. Prior to the new standard, a disclaimer opinion (*where no opinion was issued by your auditors*) was the standard opinion provided by your auditor in a limited-scope audit, now this standard requires the auditor's report to include two opinions based on the audit and procedures performed relating to non-certified and certified investment information:
    - The first opinion is whether the amounts and disclosures in the financial statements not covered by the certification are presented fairly, in all material respects, and
    - The second opinion is based on whether the certified investment information in the financial statements agrees to or is derived from, in all material respects, the information prepared and certified by an institution.
  - Management is responsible for the acceptance of the ERISA Section 103(a)(3)(c) audit and proper certification of the investments.
  - A substantially completed draft of the 5500 must be completed prior to dating the auditors' report.

KEY AUDIT MATTERS:

- Key Audit Matters are a new reporting option that came into effect for retirement plan years ending on or after December 15, 2021. Key audit matters are required to be reported on by your independent auditor, if engaged to report on key audit matters, in the auditor's report and to communicate to those charged with governance (*i.e. plan management and, if applicable, its governing body*). As previously mentioned, this is not a requirement but an option by plan management to add this reporting to the audit engagement.
- The determination of a key audit matter is at the judgement of your auditor. These matters could include consideration of accounts that are at a high risk of material misstatement, risk of plan noncompliance, any significant and unusual transactions such as plan mergers, spin offs, or plan terminations, or accounts that are subject to estimation.

SECURE ACT 2.0:

- The Setting Every Community Up for Retirement Enhancement Act 2.0 Securing a Strong Retirement Act was approved by the U.S. House of Representatives in March 2022. It's now with the Senate for review.
- The SECURE Act 2.0 provides more accessibility for individuals to save for retirement. Some of the provisions include auto-enrollment, tax credits for small business to adopt a retirement plan, increase in catch-up contributions, and increase required minimum distribution age.
- SECURE Act 2.0 was covered in more detail in our volume 4 newsletter (**Read it here**).

CYCLE 3 PLAN RESTATEMENT ENDS JULY 31, 2022:

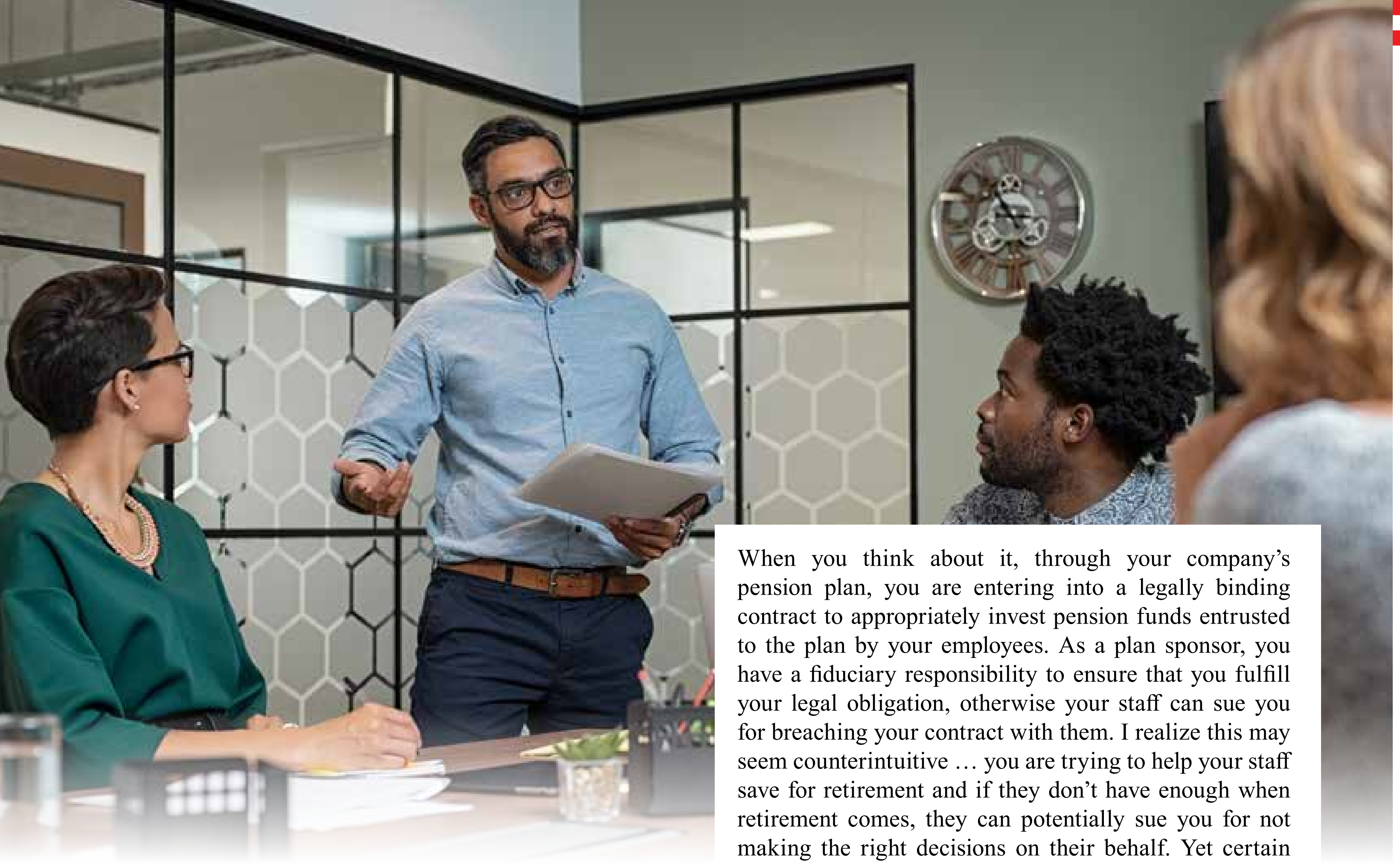
- The IRS deadline for a defined contribution plan, specifically for 401(k), profit sharing, and money purchase plans to restate its plan document, in accordance with the IRS cycle 3 restatement is July 31, 2022. The restatement period for pre-approved defined contribution plans opened on August 1, 2020 and will close on July 31, 2022. The restatement period occurs every six years for plan documents to be updated with statutory and regulatory changes.
- With each cycle restatement, the IRS will provide a new opinion letter on the pre-approved plan document, which states that the plan document is a qualified plan under the Internal Revenue Code.

- The restatement comes with several documents for plan sponsors to maintain, including an updated plan document and adoption agreement, IRS opinion letter, trust/custodial agreement, and an updated summary plan description.

OTHER ISSUES:

- We continue to monitor other issues impacting qualified retirement plans:
  - There has been an increase in cyberattacks on plans. Plan sponsors and employees with access to plan information need to continue to remain vigilant to protect plan assets from attack.
  - Lawsuits by employees against plan sponsors continue to rise as employees do not believe their employees have done an effective job selecting and monitoring investment options, educating staff, and minimizing plan costs. It is important for plan sponsors to develop committees or identify responsible parties to monitor plan compliance and effectiveness.

I hope this information is helpful as you navigate through 2022. Please reach out to us if you have any questions.



CONCERNS IN A
DOWN ECONOMY

In a nutshell, the goal of a pension plan is to help your employees put aside money for their retirement. This can be done strictly on an employee deferment system, or you, as their employer can make contributions to help them reach their retirement goals. The problem is, however, with Americans living longer and the need for current resources, most of your employees will not be able to put away enough money to meet their retirement goals. This is nothing new. The pension fund industry has been historically challenged with generating sufficient returns to keep up with life expectancy and cost of living changes. While 2020 and 2021 were good years overall for the stock market, 2022 has dramatically suffered due to high inflation, supply chain shortages, and federal interest rate hikes. This has caused plans to consider broadening their investment choices and even asset classes in an effort to improve overall returns for their participants. On the flip side, there has been increased pressure on plan administrators to be more socially responsible in their investment options with increased pressure by participants for plans to adopt **environmental, social, and governance principles ("ESG")**.

When you think about it, through your company's pension plan, you are entering into a legally binding contract to appropriately invest pension funds entrusted to the plan by your employees. As a plan sponsor, you have a fiduciary responsibility to ensure that you fulfill your legal obligation, otherwise your staff can sue you for breaching your contract with them. I realize this may seem counterintuitive … you are trying to help your staff save for retirement and if they don't have enough when retirement comes, they can potentially sue you for not making the right decisions on their behalf. Yet certain jurisdictions (*such as New York City*) may require you to have a plan and even if it's not a requirement, good luck attracting and retaining staff without one. Kind of that rock and a hard place dilemma.

The number of class-action lawsuits aimed at participant-directed 401(k) and 403(b) defined contribution retirement plans has been on the rise, with employees alleging that plan fiduciaries breached their **ERISA (Employee Retirement Income Security Act)** duties in ensuring that plan investments and overall options were appropriate. Many of these lawsuits have focused on the plan sponsor's lack of appropriate monitoring of plan fees, investment alternatives, and/or didn't offer appropriate investment options or classes and as a result, plan participants investments suffered (*or were not maximized*). In January of this year, the Supreme Court made it easier for these lawsuits to gain traction. In Hughes vs Northwestern University, the Supreme Court overturned a lower court decision, basically saying that it is the responsibility of a plan's fiduciaries to conduct their own independent evaluation of plan investment options to determine which plan investments may be prudently included in the plan's menu of options. If the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time, they breach their duty. This definitely makes it easier for plan participants to have their day in court if you are not meeting your fiduciary responsibility.

So what should you do in order to help your employees meet their retirement goals and still ensure that you're maintaining your fiduciary responsibility as the plan trustee/sponsor?

1. IMPLEMENT PLAN PROVISIONS TO HELP YOUR STAFF SAVE:

Many plans take a passive approach to employee enrollment, waiting for employees to come to the realization that they need worry about themselves when it comes to retirement. Adding an automatic enrollment option to your pension plan may be a much better option. An automatic enrollment provision does just that, it automatically enrolls employees into the plan when they become eligible unless they affirmatively opt out. This gets your employees into the plan and putting money aside for retirement as soon as they can. You can couple this with an auto-escalation provision that increases the percentage an employee puts away each year up to a predetermined level … for example all employees are auto enrolled at 5% with an auto-escalation of 1% per year, capping out at 12%.

2. EDUCATE YOUR STAFF ABOUT PLAN AND INVESTMENT ALTERNATIVES:

Most employees do not understand their investment options or their pension plan in general. As a result, they are paralyzed into doing nothing, especially if you offer a broad base of investment options. By working with your investment advisor to come in regularly throughout the year to educate your staff about investing, investment options, and your plan, you will be giving your staff the tools they need to make better choices and increase the likelihood they will meet their retirement goals.

3. REVIEW YOUR INVESTMENT OPTIONS ON A REGULAR BASIS:

Investment performance of mutual funds change on a periodic basis. This occurs because individual money managers change, portfolio economics change, funds grow, etc. A top producing mutual fund one year, may completely underperform the next. What's more, different mutual funds have different levels of risk, even if they have the same strategy (*such as large cap growth fund*). What's more, there are different types of shares of mutual funds (*retail vs. institutional*) and different mutual funds come with different expense charges. This can get very complex, but it is also extremely important. You should be meeting with your plan's investment advisor on a regular basis (*say quarterly*) to review the various investments in your plan and determine whether these investments should remain in your plan, be put on watch, or replaced within the plan. This will help to ensure that your employees consistently have access to appropriate investment options.

4. STAY IN COMPLIANCE WITH REGULATIONS:

Regulations change on a regular basis with respect to pension plans, and even when they're not changing, your business may be. This could result in you going out of compliance with your plan provisions. You should assign someone on your staff to be responsible to ensure that you remain in compliance with plan provisions. **The IRS has outlined plan sponsor responsibilities that is a good starting point to ensure you're compliant.**

5. COMMUNICATION:

It is important to communicate with your employees throughout the year and make sure if they have questions or concerns, they know who to go to and they feel that their issues and concerns are being heard and addressed.

6. DOCUMENTATION:

Document your policies with respect to the above and document all your meeting to review your investment alternatives to support that you are appropriately meeting your fiduciary responsibility with respect to your pension plan.

Having a pension plan and helping your employees meet their long-term retirement goals is great for both you and your employees, but you need to remember having a plan comes with certain fiduciary responsibilities. Ultimately, you are responsible for ensuring the plan is operating effectively, that investments are appropriate, that fees are not excessive, and that you are following your plan document and IRS and Department of Labor regulations. While this may seem like more than you bargained for when you initially set up your plan, implementing procedures and controls, and aligning yourself with trusted advisors that are familiar with the regulations who can help you along the way, can significantly mitigate your risk. This will help you better focus on why you started the plan to begin with … to help make a difference in the lives of your staff, who invest in helping you operate effectively on a daily basis.

CRYSTAL HARVEY
SUPERVISOR

GIVING YOUR RETIREMENT PLAN

A "PEP" TALK

Every time you turn around there seems to be additional risk and exposure surrounding pension plans … employees suing plan sponsors, worries about asset allocations and administrative fees, definitions of compensation, changing and confusing regulations, and more. While we all want to do the right thing and help our employees put aside resources for retirement, *are the risks of maintaining a pension plan really worth it?* In the long run, yes. Pension plans are essential to attract and retaining qualified employees and they also help to set you and your employees up for long-term success, and now, thanks to the SECURE Act there is a new type of multiple employer 401(k) plan, the **pooled employer plan ("PEP")**, that can be a viable alternative to small and mid-sized organizations.

If you've looked into multi-employer plans in the past, this one is different in that it doesn't require the employers to have common ownership or interest, or for them to be located in the same geographic area, or any similar restrictions that plagued multi-employer plans in the past. What's more the PEP can establish a provision within the plan that allows it to terminate the participation of chronically noncompliant employers in the pool. This provides protection from disqualification because of the noncompliance of a participating employer.

So why look at a PEP? A pooled employer plan can provide several advantages to an employer, including the following:

BUNDLED ADMINISTRATION:

The PEP designates itself as both a named fiduciary and plan administrator. The PEP provides participating employers with a plan document (*usually with some level of term flexibility*) and assumes responsibility for all administrative duties (*including oversight of functions that must be performed by participating employers*). Furthermore, the IRS has been directed to issue model plan language for PEPs, which should ultimately simplify the process of ensuring that the plan document meets qualification requirements. This reduces the burden on you and your staff.

REDUCED FIDUCIARY EXPOSURE:

While you, as the employer, still retain fiduciary obligations with respect to choosing and monitoring the pooled plan provider, the provider assumes pretty much all other fiduciary responsibilities, dramatically reducing your risk as the plan sponsor and trustee.

REDUCED ADMINISTRATIVE COSTS:

Administrative functions like filing the Form 5500, conducting the plan audit (*which is required if you have over 120 eligible participants*), bonding, etc., are done at the plan level by the PEP provider instead of having each individual employer participating in the plan doing them separately.

ECONOMIES OF SCALE:

PEPs may be able to offer administrative, recordkeeping, and investment management on a lower-cost basis than would be available to a smaller single employer plan as plan assets should be significantly greater and fees can be spread over a much larger asset base.

While there are many positive aspects of a PEP, it's not all roses when it comes to these plans … there are some thorns to, which means employers really need to review the pros and cons of a PEP plan to their current single employer plan. Some of the more prominent negatives of a PEP are as follows:

IT IS WHAT IT IS WHEN IT COMES TO PLAN DESIGN:

If you are looking for flexibility in your benefit structure for different departments/programs, job categories, etc. (*as are available in new comparability plans*), you are going to be limited in your ability to do so based on the plan document options offered by the PEP provider. This will remove some of the potential for creative plan design to benefit you and your employees where it will be the most favorable or impactful.

LIMITATIONS ON INVESTMENT ALTERNATIVES:

Since PEP providers are taking on fiduciary responsibility for the plan, they will most likely offer limited or no flexibility with respect to your investment choices within the plan. While this is advantageous because it limits your fiduciary responsibility, it also removes your say in how plan assets will be invested.

LESS ADMINISTRATIVE SAY:

As outlined above, you have less administrative responsibility with respect to a PEP, but you also have less administrative input. Once you select the PEP you are working with, they choose the recordkeeper, the investment advisors, and make all other decisions on how the plan will be run.

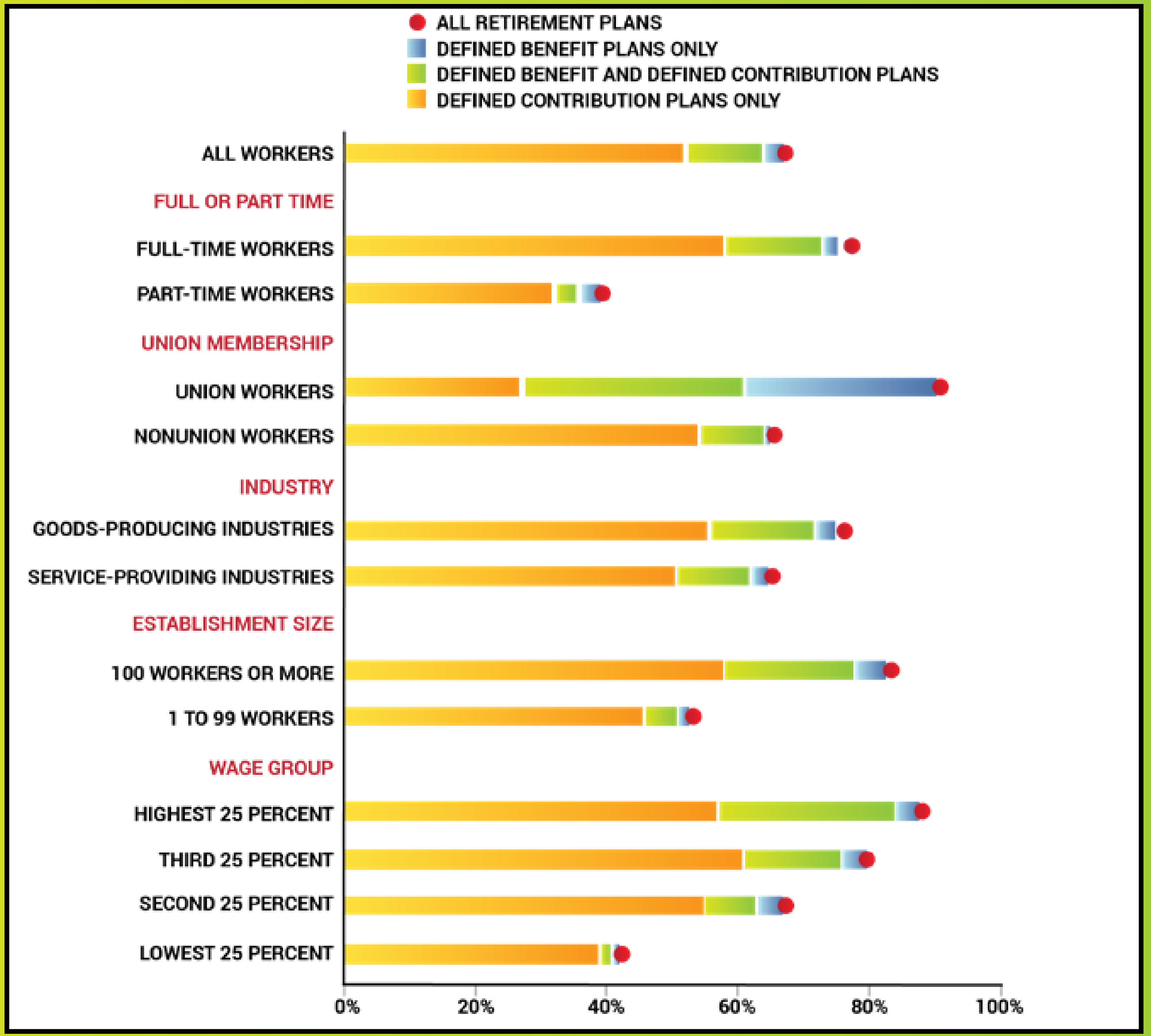
UNSUITABILITY IN CERTAIN CIRCUMSTANCES:

A governmental or church plan is unlikely to be able to use a PEP as such plans are subject to rules other than ERISA. The market for plans for such employers is already limited, so it is unlikely that PEP sponsors will be willing to provide separate PEPs for non-ERISA employers. Similarly, a PEP is unlikely to be acceptable for a collectively bargained plan, as it does not allow for joint employer-union control.

In general, a PEP is likely to be more attractive to you if you are a small or medium-sized employer that wants economies of scale and you are willing to give-up a large degree of control over your plan, and less attractive to you if you are a larger employer that can obtain low costs on your own and want to maintain more control over your plan.

COURTNEY PRYHOCKI
SENIOR ACCOUNTANT

RETIREMENT BENEFITS ACCESS RATES FOR PRIVATE INDUSTRY WORKERS, MARCH 2020



SOURCE: U.S. BUREAU OF LABOR STATISTICS

CERINI & ASSOCIATES LLP

CERTIFIED PUBLIC ACCOUNTANTS

Services Provided

Accounting • Auditing • Budget Modeling • Cost Reporting
Financial Modeling • Financial Planning • Forensic Accounting
Internal Audit Services • Litigation Support • Management Consulting
Operational & Internal Control Reviews
Policy & Procedure Reviews • Strategic Business Planning
Tax Planning & Preparation • Third Party Contract Negotiations

Cerini & Associates, LLP
www.CeriniCPA.com
Suffolk Office: P: (631) 582-1600 | **F:** (631) 582-1714 | 3340 Veterans Memorial Hwy., Bohemia, NY 11716
Nassau Office: P: (516) 364-7090 | **F:** (516) 364-7094 | 575 Underhill Boulevard, Ste 125, Syosset, NY 11791