

How to Design a Retirement Education Program That Reduces Your Company's Legal Liability

By Liz Davidson, founder and CEO of [Financial Finesse](http://www.financialfinesse.com).

As the legal environment is tightening around plan sponsor's fiduciary responsibilities, we regularly get questions from plan sponsors on what type of education program they need to offer employees to adequately protect themselves against lawsuits from employees claiming they did not receive sufficient information on how to effectively manage their retirement plans.

This is a tough question. If you ask 100 ERISA attorneys this question, you'll get 100 different answers -- not because they don't understand the law, but because it's very much open to interpretation. Our answer errs on the side of conservatism, but is within guidelines we've gotten from ERISA attorneys.

Below we outline a program you can put into place that we feel is sufficiently protective given the current legal environment. This does not guarantee you will never face a legal issue, but it offers a high degree of protection should you face legal challenges surrounding the information you provided employees to help them make investment decisions.

- Provide mandatory retirement planning workshops for employees at least once a year--delivered in person and/or online. In most cases, in person is better where appropriate in terms of getting employees to act on the information they receive, but webcasts are an acceptable substitute where logistics make in-person education too difficult. If it is not feasible to require attendance at the workshops or webcasts, make sure you at least make them available to all employees and heavily market them so employees can't later claim that you didn't make the education available to them.
- Make sure that the information provided in the workshops is comprehensive, showing employees how they can decide how much they need to save for retirement, how to allocate assets, how to evaluate and select individual mutual funds, and how to manage distributions from their plans. You are more protected legally if the education covers all bases.
- Eliminate conflicts of interest wherever possible by working with an independent financial education firm that sells education but does not sell financial products, services or manage assets. Fees for this service can be charged to the plan. If you are committed to using your retirement plan provider or a local financial planner in lieu of an unbiased financial education firm, you can't eliminate conflicts of interest but you can significantly reduce them by requiring the firms sign agreements against soliciting employees, by reviewing the content to ensure it is objective and not sales oriented, and by having an HR manager sit in each workshop and take notes on the information provided.
- Offer retirement guidance through highly qualified online advice tools, like Financial Engines®, or one-on-one financial planning guidance from a financial education firm or a fee-based financial planning firm that charges for the hours associated with providing the service, but does not sell employees financial products or services.
- Outside of asset allocation advice provided online, stay away from in-person advice and stick with guidance instead. Guidance can reduce your legal liability, while advice can increase it--especially if the advice is deemed to be negligent. This is not an issue with qualified online advice tools, but when humans provide the advice it becomes another story altogether.
- Keep good records of all communications on the mandatory workshops and one-on-one guidance (online or in person) to show that you made employees aware of all education programs available to them and that you even took the step of requiring attendance at the workshops to ensure they didn't miss out on information they needed to make informed decisions.

- Keep good records of all employees who attend the workshops and access one-on-one guidance or online advice. If any of these employees later claim they did not have the information they needed to make informed decisions, you will be very glad to have the attendance and usage records to show that they did in fact receive the education.

The Ask Financial Finesse Q&A service is designed to provide general information on trends and developments in workplace financial education programs and participant education strategies. Due to the complex nature of financial benefits and/or workplace financial issues, the information contained in this document is not to be construed as advice.

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