

## News

# Kreps Covers ERISA Section 404(c) with PLANSPONSOR

## ATTORNEYS &amp; PROFESSIONALS

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## PUBLISHED

05/01/2024

## SOURCE

PLANSPONSOR

## SERVICES

Retirement Services

- [Financial Institutions & Advisers](#)
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Groom principal and chair of the firm's [Retirement Services](#) group, [Michael Kreps](#), was quoted by *PLANSPONSOR* in the article, "Breaking Down ERISA Section 404(c) to the Basics," where he examined protections offered to plan fiduciaries by ERISA Section 404(c).

According to *PLANSPONSOR*, Kreps noted that "before this provision was passed, it was unclear whether employers were liable for participants' investment choices."

"Absent 404(c), there's this question of, 'what if I give [participants] seven choices [of investment options] and an 80-year-old [invests] 100% into small-cap equities... is that my fault or theirs?'" Kreps said.

"The whole point here is that participants are exercising discretion over their own account, and the employer is not liable for that," Kreps continued. "But if they don't have [enough options], the [plan sponsor] doesn't get that relief. Or if [the investments] have lockups, the [plan sponsor] doesn't get that relief."

"The goal was, 'let's level the playing field,'" said Kreps. "You get this 404(c) protection, regardless of whether [the participant] is auto-enrolled or they make their own election."

The outlet further reported that Kreps said that "for plan sponsors who are unsure if they are complying with 404(c), it is important for them to have conversations with their recordkeeper."

*PLANSPONSOR* wrote that Kreps continued, saying that "employers should confirm with their providers that this automated process is working."

"They should be talking to their recordkeeper or TPA to understand the process by which people are enrolled [and] the notices they get," Kreps noted.

According to *PLANSPONSOR*, Kreps added that "it is important for plan sponsors to ask their recordkeepers if they are providing an adequate number of investments on the platform, if they provide a diverse array of choice and if participants are receiving the right disclosures."

The outlet wrote that Kreps recognized that "there is often confusion, among sponsors, about the scope of relief that 404(c) provides."

“I think sometimes 404(c) is thought [of] as complete relief for employers, like if you give people enough choice, then you’re off the hook,” Kreps said. “You’re responsible as a fiduciary for prudence—selecting and monitoring the investments that are available. What you get relief from is where the participant chooses among that. But putting [the investment options] on your platform to begin with is a fiduciary act.”

To read the article, [click here](#).