

Common Questions about Retirement Plans

With over 1,800 retirement plan clients, we get hundreds of great questions every year. We feel it is our responsibility to be a resource for our clients, and provide valuable answers that they can count on. We have compiled the most frequently asked questions in this easy to understand reference guide.



Top 5 Questions

Q: What is the *biggest risk* in sponsoring a 401(k) plan?

A: The number one area in which plan sponsors get in trouble is for withholding 401(k) contributions from employees' wages, but failing to remit those contributions to the investment custodian. We will help you manage the other compliance areas of your plan.

Q: We *forgot to send in our Form 5500* before the deadline. What do we do now?

A: Your best bet may be to file under the Delinquent Filer Voluntary Compliance Program. The Department of Labor fee is \$750 but it allows the plan to avoid penalties of up to \$1,100 per day for late filing.

Q: *When must 401(k) contributions* withheld from wages be remitted to the investment company?

A: Generally within 7 business days, or as soon as administratively possible.

Q: If we hire a *trustee outside* of our company can we avoid having liability for the plan?

A: No. The plan sponsor will still be liable for the proper operation of the plan.

Q: What is the *401(k) deferral limit* this year?

A: The deferral limit for 2022 is \$20,500 plus an extra catch up contribution limit of \$6,500 for any participant who is 50 years of age or older.



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Q: Do we need any documentation for employees who *chose not to enroll* in our 401(k) plan?

A: Yes. You should retain a signed enrollment form or other documentation showing that the employee declined to participate. Employers who don't have signed waivers can be forced to make contributions for the employee later.

Q: Do we really have to pass out a copy of the *Summary Plan Description* to all of our plan participants?

A: Yes. In fact, you must provide a copy to all eligible employees.

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Q: If we hire a *trustee outside* of our company can we avoid having liability for the plan?

A: No. The plan sponsor will still be liable for the proper operation of the plan.

Q: What is *Form 5500*?

A: Form 5500 is the annual return (similar to a tax return) that the plan files with the Department of Labor.

Q: What is the *biggest risk* in sponsoring a 401(k) plan?

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Q: What is the *401(k) deferral limit* this year?

A: The deferral limit for 2022 is \$20,500 plus an extra catch up contribution limit of \$6,500 for any participant who is 50 years of age or older.

Q: Will our plan need to be *audited* by a CPA firm?

A: If you have more than 100 eligible employees at the start of your first plan year, you will need to have an audit done by a CPA firm and attach a copy to your Form 5500 filing. Otherwise, you will not need an audit until a subsequent year after you have exceeded 120 eligible participants.

Q: Will our retirement plan have to pay *taxes*?

A: Generally no, unless the plan engages in certain less common business activities. Although the plan could pay penalties if limits are exceeded or deadlines missed.

Keeping it Going

Q: We'd like to *close the retirement accounts* for some employees who have been gone for a long time. Can we just write them checks?

A: No. If the participant's account is over \$5,000, you may not force them out of the plan. However, if their account is under \$5,000, and your plan allows it, you may force the participant to either take a distribution, or you can roll the funds to an IRA account.

Q: Can we *stop our matching* contribution in the middle of a plan year?

A: Yes, but it may require a plan amendment.

Q: What is the *ADP* (Actual Deferral Percentage) test?

A: The ADP test is a test which limits the amount the "highly paid" employees may contribute compared to all of the remaining employees. If the plan fails the test, then the highly paid employees will receive refunds of a portion of their contributions.

Q: What is the *deadline for* funding our *matching* contribution?

A: You must fund the matching (and/or profit sharing) contributions by the due date of your business tax return, including extensions.

Q: Why do you need a *census* with all of our employees each year?

A: There are reporting requirements, coverage tests and other factors which require that we look at a complete employee census. If you have concerns about your census information, please call us.

Q: What does *Top Heavy* mean?

A: Top Heavy is an IRS term meaning that 60% of the plan's investments are in the accounts of the key employees. If this happens, your plan must either (1) Make a 3% contribution to all eligible employees, or (2) The key employees may not contribute the following year.

Q: We've been told that our *executives put too much money* into the plan compared to the other participants. What happens now?

A: A refund (which we will calculate) must come out of the plan by March 15th (for calendar yearend plans). The refund plus earnings will be taxable to the participant on their personal tax return in the year the refund is received.

Q: What can we use our *forfeiture* account for?

A: Your plan document will specify, but you may be able to use forfeitures to pay plan expenses, reduce employer contributions, make funding corrections, and/or reallocate to the other participants in the plan.

Q: How often do we need to use the funds in our *forfeiture* account?

A: The forfeiture account should be used annually for one of the purposes noted above.

Q: As a plan sponsor, am I required to keep copies of each participant's *beneficiary statement*?

A: A third party such as an investment custodian may maintain beneficiary statements for the plan. But ultimately, it is the responsibility of the plan (usually the plan sponsor) to keep a copy of the current election. Much litigation has occurred surrounding the lack of current beneficiary statements.

Q: What is a *required minimum distribution*?

A: Company owners and retired workers who are over the age of 70½ must begin taking distributions from the plan. Other participants (over the age of 70 ?) who are still working for the plan sponsor do not need to take these distributions until they actually retire.

Starting Out

Q: What is a *Safe Harbor* plan?

A: A Safe Harbor plan is a plan which attempts to avoid the problems of the ADP and Top Heavy tests by making a guaranteed contribution to employees. That contribution is either a matching contribution that caps at 4% of wages for employees who are contributing their own funds, or a contribution of 3% of wages for all eligible employees.

Q: Can we change our plan to be a *Safe Harbor plan this year*?

A: No. A Safe Harbor Notification must be given to employees 30 days before the start of a plan year. You will need to wait and start the Safe Harbor provisions next year. Note: Companies who do not currently have a 401(k) plan may start a Safe Harbor plan midyear, provided there is at least 90 days remaining in the plan year.

Q: May I put my *whole paycheck* into the 401(k) plan?

A: Almost. As long as your plan allows, you may defer your entire paycheck less the amount withheld for Social Security and Medicare taxes.

Q: How much *Roth 401(k)* may I defer?

A: The limits for Roth deferrals are the same as for regular deferrals. That amount is \$20,500 for 2022 plus \$6,500 for catch up contributions.

Q: We've just signed an *employment agreement* with a new executive. His agreement allows him to participate in our 401(k) plan now, even though our normal waiting period is 6 months after hire. Can we let him begin participating now?

A: No. ERISA (Employee Retirement Income Security Act) overrides your employment contract. The executive must wait 6 months to enter the plan just like every other employee.

Q: What happens if we *don't* get the paperwork done to *enroll* a participant by the *entry date*?

A: Generally, a participant can still be enrolled within 30 days of the entry date. However, if an employer has forgotten to give enrollment paperwork to an eligible participant, then they may be enrolled whenever the error is discovered. Also, the employer may have to make up a portion of the missed deferrals.

Q: Can I *buy real estate* with my retirement account?

A: Only if the plan document allows it. However, investments in things other than financial instruments may result in tax on your retirement account. Please consult with us before you proceed with any such transaction.

Q: Can the *owner* of our company *invest his 401(k) funds* in something different than the employees?

A: Yes, but only if the investment is offered to all participants. No participant (including the owner) may invest in something that is not available to all participants.

Q: Can we *exclude part time employees* from the plan?

A: Generally, any employee who works more than 1,000 hours per year (20 hours per week) must be included in the plan.

Q: What is an *ERISA bond*, and how much does it need to be?

A: Retirement plans are required to carry coverage to protect the plan participants from misappropriation of funds. The bond needs to be in the amount of 10% of plan assets and can generally be obtained as a rider on your regular liability insurance policy.

Q: Our company is an *LLC*. Can the "partners" still make 401(k) contributions?

A: Yes. "Partners or members" in an LLC, a partnership, or in a sole proprietorship may still *make 401(k)* contributions, as long as they have earned income.