



FREQUENTLY ASKED QUESTIONS

There are many things to consider when operating a retirement plan for your employees. We have answered some of the more frequently asked questions on the following pages. The sections are as follows:
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FREQUENTLY ASKED QUESTIONS

Eligibility

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1. What is an entry date?

An entry date is the date a participant can enter the plan after satisfying the age and service requirements described in the adoption agreement.

2. Is there a minimum or maximum period of time required before an employee can start deferring into the plan?

The employer selects the entry requirements for the plan in the adoption agreement. There is no minimum waiting period required. Depending on demographics of your company's work force and plan design, it may not be beneficial to have immediate entry. The employer may require up to one year of service to enter a 401(k) plan. The entry dates would need to be frequent enough to allow a participant to enter within 18 months from their date of hire.

3. When is a participant entitled to receive an employer matching contribution and/or profit sharing contribution?

Once the participant has satisfied the age and service requirements for employer contributions and has entered the plan, the participant would be eligible to receive matching contributions and profit sharing contributions. Additionally, the employer may have yearly conditions for the participant to also satisfy to receive these contributions each year. The employer may require up to 1000 hours of service each year and require that a participant be employed the last day of the plan year to receive matching contribution or profit sharing contributions. These requirements would be provisions in the adoption agreement.

4. If a participant passes on the initial entry date, when can he or she join the plan?

Employees who meet the service requirements are considered participants as of their first entry date whether they actively defer or not. If a participant wishes to delay contributions to the plan until after their initial entry, they may begin deferring after their initial entry date ([more info](#))

5. What happens when a participant was allowed to defer before his or her entry date into the plan?

Typically, the ineligible deferrals would be returned to the participant and be treated as regular income. If this situation should arise, please contact your administrator at APC to discuss. Based on specific facts and circumstances, other corrective steps may be used.

6. Can I exclude part-time employees?

Part time employees cannot be excluded as a specifically stated class of employee. Plans can have an hour requirement of up to 1,000 hours for a participant to work during a plan year to satisfy the eligibility requirement.

7. How is a year of service determined?

A year of service is defined in your adoption agreement as a twelve month period with a specified number of hours. Typically, a year of service is defined as a participant completing 1,000 hours within a twelve month determination period. The employer may choose to have less than 1,000 hours. The IRS guidelines do not allow for the hour requirement to be greater than 1,000 hours.

Contributions

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1. How much can a participant defer?

The IRS limits the amount a participant can defer in a given calendar year. This is the 402(g) limit which is an indexed amount. For 2023, the maximum allowable salary deferral contribution is \$22,500. Participants at least 50 years of age can defer an additional \$7,500. The amount a participant can defer may also be further limited by the plan sponsor through a provision in the adoption agreement by imposing a maximum deferral percentage or adopting a SIMPLE 401(k) Plan. The deferrals are also subject to the 415 limit described under compliance testing.

2. How often can a participant change his or her deferral percentage?

Changing the deferral percentage could be as frequent as each payroll date, monthly, or plan entry dates. Typically, the employer allows the participant to cease deferrals at any time. It is advisable to limit the number of times in a given plan year a participant is allowed to change his or her deferral percentage.

3. Does a Highly Compensated Employee have any additional deferral restrictions?

A Highly Compensated Employee may decide to defer at a lower rate due to low participation of Non Highly Compensated Employees to pass the ADP test ([see more in testing](#)).

4. Where do I send the contributions?

You would send the contributions to the investment company holding your plan assets. If you should need assistance remitting your contributions, you may contact the investment company or your administrator at APC.

5. How soon do I have to send the contributions to be timely?

The Department of Labor regulations state that all 401(k) elective deferrals must be deposited into the plan's account as soon as administratively feasible, but in any case no later than 7 business days after the date in which the withholding takes place.

The above is only a guideline for depositing elective deferrals. APC recommends that you separate the money for 401(k) elective deferrals and loan payments from the company's assets as soon as possible after each payroll date by either transferring the money from your company's checking account to a checking account established in the name of the plan or issuing a check for the 401(k) elective deferrals and depositing the contributions in the plan.

Plan sponsors are required to disclose late contributions on the Form 5500 filed with the DOL. A 15% excise penalty is imposed on late contributions.

6. What is the difference between an employer matching contribution and an employer non-elective contribution?

Employer non-elective contributions, also known as profit sharing contributions, and employer matching contributions are contributions made by the employer to eligible participants.

The profit sharing contribution is not contingent upon a participant deferring but is based upon an allocation formula in the adoption agreement and the compensation of the participant.

Employer matching contributions are only given to participants who are deferring and are based on a matching formula. The matching formula would define the amount of compensation to be considered and the rate of match. For example, under a matching formula of 50% up to 6% of compensation, a participant deferring 8% would receive a matching contribution of 3% of his or her compensation.

7. Is there a deadline to send profit sharing contributions matching contributions?

The employer contributions of profit sharing and matching should be deposited by the due date of the employer's corporate return. If the employer has filed for an extension, the employer automatically receives an extension for depositing the employer contributions as well. For a calendar year plan the contributions will be due by March 15th. However if the employer files for an extension, the employer contributions will be due by September 15th. If matching contributions are deposited on a payroll basis, they must be deposited at the same time as deferrals.

If the plan has a safe harbor matching contribution on a per payroll period basis, the safe harbor matching contributions should be received by the plan no later than the last day of the next quarter.

8. What is the difference between matching on a per payroll period basis versus an annual basis?

A match based on payroll period is calculated by applying the matching formula to the compensation deferred upon each pay period. An annual match is calculated by applying the matching formula to the annual compensation of the participant. If the matching contributions are on an annual basis, but are remitted throughout the year, a true-up is likely to be needed. For example, if a participant defers 8% the first half of the plan year and defers only 2% the second half of the year with matching up to 5%, the match the participant is entitled to receive would be greater on an annual basis than on a per payroll period basis.

9. What is a catch-up contribution?

Participants who are at least age 50 or older can defer an additional \$7,500 of their compensation during 2023.

10. What are Roth contributions?

Roth contributions are elective deferrals made on an after tax basis within a 401(k) plan. Since these contributions are elective deferrals, they are subject to the 402(g) limit the same as elective deferrals made on a pre-tax basis. If certain withdrawal restrictions are met, the contribution basis and associated earnings are not subject to income taxation at the time of distribution.

Offering Roth contributions is completely voluntary. You will need to contact your administrator at APC so that an amendment can be prepared to add this feature to your plan. You will also need to work with your payroll provider and investment company holding your plan assets to set the Roth 401(k) contributions up as an after-tax payroll withholding.

Census Data Request and Year-End Questionnaire

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1. Why do I have to provide the census information and updated questionnaire?

APC uses this vital information to complete compliance testing and the Form 5500 required by the IRS each plan year.

2. When is the deadline to return the information?

APC requests that the information be returned within the month following your plan year-end. This deadline ensures that all IRS required testing is completed in a timely manner. If any corrective distributions are needed due to test

failure, the corrective distributions can be completed within the 2 ½ month period following plan year-end to avoid your company incurring a 10% excise penalty. The 10% excise penalty is assessed for corrective distributions processed more than 2 ½ months following plan year-end.

3. Do I have to report all employees who worked during the year including those who terminated, are part-time, or are eligible but elected not to defer?

Any employee receiving W-2 compensation is considered a common law employee of the company and is required by the IRS to be reported on the census.

4. Why do I have to provide census information for a part-time employee who may never participate in the plan?

APC needs this data to perform the coverage test and to obtain the employee count reported on the Form 5500.

5. Why do I need to report hours worked for the participants?

Hours worked during the year are needed to determine eligibility, vesting, and employer contribution requirements. Generally, an employee is credited with a year of service for eligibility and vesting if he or she works at least 1,000 hours during the plan year. A plan may require an employee to be employed 500 or 1,000 hours to receive an employer contribution. Estimated hours using the appropriate code on our census request allow us to determine if the employee worked 1,000 hours or less.

6. What is compensation from date of eligibility?

It is the compensation starting from the date the employee becomes eligible to enter the plan until the last day of the plan year.

7. What is a receivable and why is this information needed?

A receivable is any contribution received by your fund company for a plan year after the close of the plan year. This is used to reconcile the plan assets, perform testing, and complete the Forms 5500.

8. Why is the information on the questionnaire required each year?

Your plan will only operate effectively if we have accurate information about the company and its demographics. Maintaining accurate company information is imperative to maintain the plan and avoid any potential IRS and DOL penalties.

ADP and ACP Testing

1. What are the ADP and ACP tests?

The ADP and ACP tests are nondiscrimination tests which compare the contributions of the highly compensated employees (HCEs) to the nonhighly compensated employees (NHCEs) for the plan year. The elective deferral contributions for the plan year are tested in the ADP test (Actual Deferral Percentage test). The employer matching contributions are tested in the ACP test (Actual Contribution Percentage test). The group average of the individual percentages of the NHCEs sets the passing limit for group average of the individual percentages of the HCEs. If the ADP test or the ACP test fail, correction can be refunding contributions to the HCEs or making contributions to the NHCEs.

2. Who is considered to be a Highly Compensated Employee (HCE)?

An employee is considered an HCE due to either ownership or compensation. An employee who earned in excess of \$150,000 (as indexed by the IRS) in the prior plan year is considered to be an HCE. An employee who is a more than 5% owner in the current or prior plan year is considered to be an HCE regardless of their compensation. Due to family attribution rules, the spouse, children, parents, and grandchildren of a more than 5% owner are attributed with ownership and are also considered to be HCEs.

3. How is the compensation test to determine HCEs used in the first year a company starts up?

Since the company was not in existence in the lookback year, none of the employees would have any compensation in the lookback year. No one would be considered an HCE based on the compensation test. There may be HCEs due to the ownership test in the year the company starts up.

4. If an owner and spouse work together and divorce during the plan year, is the divorced non-owner still considered an HCE?

If the spouse was married to the owner at any time during the plan year, the spouse would be attributed with ownership under the attribution rules of Code Section 318 for that plan year. Since the spouse is a more than 5% owner in the current plan year or in the lookback year under attribution rules, he or she would be considered an HCE.

5. What is the top paid group, and what does it mean to make the top paid group election?

A plan can limit the number of employees to be considered an HCE by making a top paid group election. The top paid group election states that if more than 20% of the employees earn over \$150,000 (as indexed for 2023), only the

top paid 20% will be considered highly compensated under the compensation test. The top paid group election is made through a plan amendment, and the election would remain in place until removed through a plan amendment.

6. If an owner does not have any earned compensation in a given plan year, would he or she be considered an employee and be included in the ADP and ACP Tests for that plan year?

In any year an owner has no earned compensation, he or she would not be considered to be an employee and would not be included in the ADP and ACP tests.

7. Are employee after-tax contributions exempt from nondiscrimination testing?

After-tax contributions are subject to nondiscrimination testing. These contributions are very rare in a 401(k) plan.

8. How does the IRS 2 ½ month deadline following the close of the plan year affect the ADP and ACP Tests?

If the failed ADP and ACP Tests are corrected after the 2 ½ month deadline by making corrective distributions, the employer incur an excise tax of 10% of the amount of the excess contribution. No penalty applies if the tests are corrected by making a qualified non-elective contribution.

9. How are excess contributions in a 401(k) plan taxed to the participant?

Excess contributions arise when the ADP test fails. If excess contributions plus earnings are distributed within 2 ½ months following the close of the plan year, the HCE reports certain amounts in gross income in the taxable year in which the first elective contributions of that plan were made. If the excess is distributed after 2 ½ months following the close of the plan year, but within 12 months after the close of the plan year, the entire amount is taxable in the calendar year distributed.

10. When is the 1099-R issued for corrective distributions?

The 1099-R for corrective distributions is issued the January following the end of the calendar year the corrective distribution was processed.

Top Heavy Testing

11. What is a top heavy test?

The top heavy test determines if the present account value of the key employees is greater than 60% of the total account value of the plan. If the key employees' account value is greater than 60%, the plan is considered top heavy and is required to make a top heavy minimum contribution to the non-key employees.

12. What makes a plan top heavy?

A plan is top heavy if the present value of accrued benefits for key employees is greater than 60% of the present value of accrued benefits of all employees as of the determination date.

13. Who is considered to be a key employee?

An employee is considered to be a key employee if he or she meets at least one of the three tests. An employee owning more than 5% of the employer is a key employee. Attribution rules apply so family members of a more than 5% owner would be key employees. An employee owning more than 1% of the employer and having an annual compensation exceeding \$150,000 is a key employee. An employee satisfying the officer test of being an officer with annual compensation of at least \$215,000 (as indexed) would be a key employee.

14. Who is considered an officer in determining key employees?

An officer is an administrative executive who is in regular and continuous service with an organization. The determination is based on facts and circumstances, including, but not limited to the source of the individual's authority, the term for which elected or appointed, and the nature and extent of the individual's duties. A person may hold the title of an officer but under the relevant facts not actually be an officer in substance.

15. Is there a limit to the number of officers who can be considered key employees?

There is a maximum number of officers that are treated as key employees. The maximum number of officers is the greater of 10% of the number of employees or three. The number of key officers is capped at 50. If the number of officers exceeds 50, rank them by compensation. The officers having the greatest amount of compensation will be considered key employees.

16. What is the determination date for the top heavy test?

The last day of the preceding plan year is the determination date used to perform the top heavy test. As an exception for new start-up plans, the determination date used for the first plan year is the last day of that year.

17. Is a contribution required for a top heavy plan?

If a plan is top-heavy, the employer must provide non-key employees a top heavy minimum contribution equal to 3% of compensation. If the highest allocation rate to any key employee is less than 3%, the employer would only have to provide a percent of compensation equal to the highest allocation rate received by a key employee for the top heavy minimum contribution.

18. Which employees must receive a top heavy minimum contribution?

The top heavy minimum contribution must be given to all eligible non-key participants employed on the last day of the plan year. No hour of service requirement can be required to receive a top heavy minimum contribution.

19. How is the top heavy minimum contribution calculated?

The top heavy minimum contribution is calculated using the entire plan year compensation regardless of whether the participant entered the plan mid year.

20. Which contributions can be used toward satisfying the top heavy minimum contribution?

Top heavy minimum contributions can be satisfied by the following types of contributions: employer profit sharing, forfeiture reallocation, qualified non-elective, employer matching, safe harbor non-elective, and safe harbor matching.

21. Do top heavy rules apply to SIMPLE plans and safe harbor 401(k) plans?

Both plan designs provide the employer protection from top heavy rules as long as the employer makes the employer contributions required under these plan designs. SIMPLE 401(k) plans are exempt from top heavy rules.

Safe harbor 401(k) plans are deemed to not be top heavy if operated within certain parameters. If the employer makes employer contributions in addition to the safe harbor contribution, the plan may not be deemed to not be top heavy for that given plan year. Additional employer contributions may trigger top heavy minimum contributions for a given plan year. If you have a safe harbor 401(k) plan and are considering making an additional employer contribution, you may contact your assigned administrator at APC to discuss potential top heavy issues specifically related to your plan.

22. Do any special vesting requirements apply to a top heavy plan?

A top heavy 401(k) plan's vesting schedule must vest fully at the completion of 3 years of service or vest at least 20% after 2 years of service with 20% per year thereafter.

23. What happens if the employer does not make a top heavy minimum contribution?

The plan could have a qualification failure resulting in the plan losing its qualification for tax purposes.

Coverage Testing

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24. What is coverage testing?

Under section 410(b) coverage testing is required. The plan must pass coverage under either the ratio test or the average benefits test. Coverage testing identifies the coverage testing group which does not include the excludable employees. Employees can be excludable due to not satisfying the age and service requirement to enter the plan, terminating employees with no more than 500 hours of service, being union employees, or being nonresident aliens. Coverage testing compares the highly compensated employees and nonhighly compensated employees to determine the percentage benefiting in the coverage testing group.

415 Limit Testing

25. What is 415 limit testing?

Contributions to the plan are known as annual additions and are limited under section 415. Annual additions include employer contributions, employee contributions, and forfeiture reallocations. Section 415 limits the annual additions a participant may receive in a limitation year to the lesser of 100% of section 415 compensation or \$66,000 (as indexed for 2023). The limitation year is defined in your adoption agreement and generally coincides with the plan year. The 415 limit testing reviews each participant's annual additions for potential excesses.

Deductibility Testing

26. What is deductibility testing?

Deductibility testing reviews the plan contributions made to the plan and the eligible compensation to determine if the contributions are within the deduction limits. All elective deferral contributions made to the plan during the employer's taxable year is deductible. The employer contributions of non-elective and matching contributions are limited to 25% of all compensation paid or accrued to participants during the employer's taxable year including 401(k) elective deferrals and cafeteria plan contributions.

Government Reporting – Forms 5500

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1. Does the IRS have a filing deadline for the Form 5500?

The IRS filing deadline for the Form 5500 is seven months after the plan year ends. For a plan year ending December 31st, the filing deadline would be July 31st.

2. Can the IRS filing deadline be extended for the Form 5500?

The filing deadline can be extended by a corporate extension or by request via Form 5558 Application for Extension of Time to File Certain Employee Plan Returns. If your company has a corporate tax extension, then the filing deadline is automatically extended one and a half months. The Form 5558 requests an extension of two and a half months specifically for the Form 5500.

3. Who should sign the Form 5500?

The plan administrator, plan trustee, or employer must sign the Form 5500 electronically.

4. My plan requires an independent audit; does the audit have to be completed prior to filing the Form 5500?

A plan typically having at least 100 participants at the beginning of the plan year is considered to be a large plan requiring an audit by a qualified independent public accountant. The auditor's opinion report is attached to the Form 5500.

5. Who should be reported on the Form 8955-SSA?

Form 8955-SSA reports information concerning separated participants with deferred vested benefit rights. The information on this schedule is given to the Social Security Administration to provide to participants when they file for Social Security benefits.

6. What is a Summary Annual Report (SAR) and who has to receive a copy of it?

Annually, the plan trustee should furnish a copy of the SAR to each participant of the plan and to each beneficiary receiving benefits under the plan. Participants include all active participants, retired or separated participants that are entitled to receive benefits, and beneficiaries of deceased participants.

7. What is Form 5330 and is there a filing deadline?

Form 5330 Return of Excise Taxes Related to Employee Benefit Plans is filed to report Section 4975 Tax on Prohibited Transactions for non-timely submission of plan contributions and Section 4979 Tax on Excess Contributions for making corrective distributions after 2 ½ month deadline. Excise tax for Section 4975 is due within seven months from the tax year end of the employer. Excise tax for Section 4979 is due within fifteen months from the plan year end to which the corrective distributions relate.

8. What is a fidelity bond and how do I go about getting one?

A fidelity bond protects your plan against losses due to mishandling or misappropriation of funds. Fidelity bonds are available through a casualty agent.

9. What amount does my fidelity bond need to be?

The coverage amount is the greater of \$1,000 or 10% of total plan assets as of the beginning of each plan year up to a maximum of \$500,000. If it is the first plan year, estimate the value that will be handled for the year.

Loans

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1. Can a participant borrow from his or her retirement plan?

The employer determines if the plan allows for participant loans. This choice is selected in the adoption agreement. If loans are allowed in a plan, it is disclosed to the participants in the Summary Plan Description.

2. How is the rate of interest determined for a participant loan?

The rate of interest for participant loans from the plan is a variable rate based on prime rate. Within the participant loan procedure, the employer determines the rate of interest as being typically one or two percent above prime rate. This is disclosed to the participants in the Summary Plan Description.

3. How much can a participant borrow?

A participant can borrow up to the lesser of 50 percent of his or her vested account balance or \$50,000. The \$50,000 maximum will be reduced by the participant's highest outstanding loan balance within the previous twelve months.

4. How many loans can a participant have outstanding at one time?

The loan procedure will state the number of outstanding loans a participant may have at a given time. An employer

would typically allow for one or no more than two outstanding loans at a given time to increase ease of administration. The number of outstanding loans is disclosed to the participants in the summary plan description.

5. Can a participant re-amortize the outstanding loan balance?

Re-amortization may be available for certain circumstances. Contact your administrator at APC if a participant would like to re-amortize his or her outstanding loan balance.

6. How frequent should loan repayments be made?

Loan repayments should be withheld on an after-tax basis from the participant's paycheck each payroll and remitted as timely as elective deferrals. This would be as soon as administrative feasible, but no later than 15 business days after the end of the month in which the withholding takes place.

7. How should the loan repayments be submitted?

Loan repayments for each participant should be identified separately from contributions on the allocation listing submitted to the investment company.

8. What is the maximum length of time a participant can repay a loan?

A participant must repay the loan within 5 years from the issuance of the loan. If a participant is using the loan to purchase his or her primary residence, the loan may be amortized over a 30 year period.

9. How long does it take for a participant to receive the loan check?

APC will process the loan within 5 business days of receipt of complete information and will request the loan from the affiliated investment company holding the plan assets. Depending upon the investment company's turnaround time, the check will be issued within 2 to 10 business days.

10. Are there any tax consequences to a participant for taking a loan?

A loan is not considered to be a distribution of plan assets so there is no taxable event to the participant. In the event a participant defaults on the loan, the outstanding loan balance plus any accrued interest will be considered a distribution of plan assets and will be reported to the IRS on a 1099-R. The participant must include this amount as income on his or her income tax return.

This amount is included by the participant as income on his or her income tax return.

11. What information do I have to provide if a participant requests a copy of the annual report as referenced in the SAR?

If requested, a participant is entitled to receive a copy of the Form 5500 and the accompanying schedules with the exception of the Form 8955-SSA. A participant is also entitled to a copy of the plan's financial statement or asset reconciliation for the plan year. This would not include financial detail at a participant level.

Distributions

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1. How do I request distributions?

The employer will give the participant a copy of the application for benefits form. This form is available in your administration manual or you can contact the distribution department at APC to receive a copy via e-mail. You can request the participant to return it to you for review or you can direct the participant to return it directly to APC. APC will accept a facsimile or an original copy by mail.

2. How does a terminated participant request a distribution from the plan?

A terminated participant may request the application for benefits form from his or her former employer or from APC directly. It is recommended for employers to provide the application for benefits to a participant at termination so that the employee is aware of their retirement benefits and can cash it out when they leave. This will also reduce record keeping cost, if their account balance is under \$1,000 and the employer will not have to track them down to request them to cash out their retirement benefits.

3. For what reasons can a participant request a distribution?

The IRS guidelines are very specific in the reasons a participant can withdraw money from a 401(k) plan. Although the IRS allows for distributions for termination of employment, death, disability, retirement, hardship, and in-service withdrawal beginning as early as age 59 ½., the plan provisions in your adoption agreement may not allow for all of these distribution options.

4. Can a participant close his or her account if they are not terminated?

Depending on your company's plan provisions in the adoption agreement, a currently employed participant may be able to withdraw his or her account balance as early as age 59 ½.

5. How is the outstanding loan balance handled if the participant takes a distribution?

At the point of distribution, the participant may pay off the loan. If the participant pays off the loan, his or her entire

vested account balance would be available for a direct rollover. If the participant does not pay off the loan, the outstanding loan balance plus any accrued interest will be considered as being distributed to the participant and will be reported on the 1099-R as a taxable distribution.

6. How soon can a participant expect to receive a check from a distribution request?

APC will process the distribution request within 5 business days of receipt of complete information and will request the distribution from the affiliated investment company holding the assets. Depending upon the investment company, the check will be issued within 2 to 10 business days.

7. What events qualify for a hardship withdrawal?

Hardship withdrawal is available for medical expenses, purchase of a primary residence, tuition expenses, amount needed to prevent eviction or foreclosure of a primary residence, funeral expenses, and repair expenses of a primary residence qualifying for casualty deduction under Section 165. These expenses generally are related to the participant, spouse of the participant, or children and dependents of the participant.

8. What type of documentation is needed to substantiate a hardship exists?

Documentation for medical expenses would be copies of unpaid medical bills within the past 6 months. An eviction notice or letter from the landlord stating the amount needed to prevent eviction or foreclosure is acceptable documentation. Copies of tuition bills, copies of billed funeral expenses, and copy of purchase contract for primary residence are also acceptable. A signed statement from the participant stating that he or she has no other resources to use for these expenses is needed.

9. If the plan allows for loans, can a participant take a hardship?

The participant must exhaust every reasonable financial means available to him or her before requesting a hardship distribution. This includes taking the maximum available as a loan from the 401(k) plan.

10. How long is a participant's right to defer suspended following a hardship withdrawal?

A participant's right to defer is suspended for six months following a hardship withdrawal.

11. What types of monies are available for a hardship withdrawal?

Depending upon your company's plan design and adoption agreement provisions, hardship withdrawals may be available from elective deferrals, employer matching, profit sharing, and rollovers. Contact your administrator at APC for specific availability for your plan.

12. When is the tax for the hardship withdrawal paid?

The participant can elect to have 10% federal income tax withheld at the time the check is issued. Regardless if the participant has withholdings for federal income tax when the check is issued, the participant will receive a 1099-R and is required to report the distribution as income on his or her income tax return. The exact amount of tax will depend upon the individual tax bracket of the participant.

13. When does the participant pay the 10% excise penalty for premature distribution?

Distributions from the plan paid to participants under the age of 59 ½ are generally subject to a premature distribution penalty of 10%. The participant will receive a 1099-R and is required to pay the premature distribution penalty on his or her income tax return.

14. Are there any tax consequences to a participant for taking a distribution?

Distributions are subject to 20% federal income tax withholding at the time the check is issued for a lump sum distribution. The participant will receive a 1099-R and is required to report the distribution as income on his or her income tax return. The exact amount of tax will depend upon the individual tax situation of the participant. Distributions from the plan paid to participants under the age of 59 ½ are generally subject to a premature distribution penalty of 10%.

15. What is vesting and how does the vesting schedule affect the participants' account value?

The plan may require participants to complete a number of years of service to be entitled to the employer contributions. The vesting schedule states the number of years of service and the vested percent for each year until the schedule reaches 100%. If the vesting schedule is based on a six year graded formula of 20% for 2 years of service up to 100% at 6 years of service, a participant with 4 years of service would be 60% vested. If a participant terminates employment prior to being fully vested at 100%, the participant would only be entitled to the percentage he or she is vested of the employer contributions. At the point of distribution, the unvested portion of the employer contributions would be transferred to the forfeiture account within the plan and be used as set forth in the adoption agreement.

16. Does a participant's spouse have to sign distribution paperwork?

Spousal consent on a form entitled "Spouse's Consent Form of Benefit" is generally required to be completed with the distribution paperwork.

17. If spousal consent is required and the participant is not married, does the participant have to complete any paperwork?

For distribution requests for termination of employment, in-service withdrawals, and hardship withdrawals, unmarried participants have to complete a form entitled "Certification if no Spouse."

18. Who is required to take a minimum required distribution?

Participants age 72 and older may be required to take minimum required distributions. APC will review the census information provided by you and assist in determining the participants requiring a minimum distribution. APC will calculate the amount of the minimum required distribution. However, APC will not be responsible for any participants who fail to receive their RMD timely.

19. When do minimum required distributions have to be completed?

Minimum required distributions are due by the end of the calendar year on December 31st. For the first year the participant may extend taking the minimum distribution until April 1st following the first calendar year end he or she turned 72.

Safe Harbor Plan Design

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1. What is a safe harbor 401(k) plan?

A 401(k) safe harbor plan is a 401(k) plan that automatically satisfies the nondiscrimination rules for elective deferrals and matching contributions. For a 401(k) plan to be considered a safe harbor plan, employers must satisfy certain contribution, vesting, and notice requirements.

2. What is a safe harbor notice?

Safe harbor 401(k) plans are required to distribute a notice to all participants each plan year. The notice contains the information required by the IRS. APC prepares the safe harbor notice for the employer to distribute to all eligible employees.

3. When should the safe harbor notice be distributed?

The safe harbor notice must be distributed each plan year to all eligible employees at least 30 but no more than 90 days before the first day of the plan year. An employee becoming eligible after the annual notice is distributed must receive the safe harbor notice by the date the employee becomes eligible.

4. What are the advantages of a safe harbor 401(k) plan?

A safe harbor plan design offers an employer many advantages. As long as the plan operates within guidelines, a safe harbor 401(k) plan is deemed to pass ADP/ACP nondiscrimination tests and is deemed to not be top heavy. This allows the highly compensated employees to defer greater dollar amounts in plans with lower participation level.

5. What are the disadvantages of a safe harbor 401(k) plan?

Safe harbor 401 (k) plans have specific employer contributions so the employer has less flexibility than available in a traditional 401(k) plan. All employer safe harbor contributions are always 100% vested. In-service withdrawal restrictions apply to safe harbor contributions. An annual safe harbor notice is required to be distributed by the employer to all eligible employees.

6. What contribution requirements need to be satisfied under a safe harbor 401(k) plan?

Under a safe harbor 401(k) plan, an employer can provide either a safe harbor non-elective contribution of at least 3% of compensation or a safe harbor matching contribution. The safe harbor matching contribution can be a dollar-for-dollar match on elective deferrals up to 4% of compensation or a dollar-for-dollar match on elective deferrals up to 3% of compensation and a 50 cents-on-the-dollar match on elective deferrals between 3% and 5% of compensation.

7. Can I discontinue making safe harbor contributions at any time?

Safe harbor contributions can be discontinued during the plan year if the employer provides 30 days written notice to the employees. If the employer does discontinue the safe harbor contributions during a plan year, the entire plan year is treated as not being safe harbor, and the plan is subject to nondiscrimination testing and top heavy minimum requirements.

8. Can an employer make additional contributions to a safe harbor 401(k) plan?

An employer can make an additional profit sharing contribution to the safe harbor 401(k) plan. However, these additional contributions may result in the plan no longer satisfying a top heavy minimum requirement. You should discuss this with your APC administrator prior to funding any additional funds.

9. Can any conditions be placed upon the receipt of safe harbor contributions?

The employer cannot impose an hour requirement or a last day requirement for a participant to receive safe harbor contributions.

10. When must safe harbor contributions be made to the plan?

Safe harbor contributions can be made at any time during the plan year and thereafter until 12 months after the end of the plan year. If the plan wants to satisfy the safe harbor match on a payroll period basis instead of an annual basis, the matching contributions must be made no later than the last day of the following plan year quarter.

11. Can the safe harbor non-elective contribution be counted in the cross tested profit sharing formula or for purposes of permitted disparity?

The 3% non-elective contribution can be counted in a cross tested profit sharing formula, but cannot be used for purposes of permitted disparity.

12. Can safe harbor contributions be made available for hardship distribution?

Safe harbor contributions are not available for hardship distribution.

13. Can a vesting schedule be used in a safe harbor 401(k) plan?

Safe harbor matching and safe harbor non-elective contributions are always 100% vested. Regular matching and discretionary profit sharing contributions can be subject to vesting schedule within a safe harbor plan.

Plan Termination

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1. How does a trustee of the plan terminate the retirement plan?

The trustee would notify APC in writing of the intent to terminate the retirement plan. APC will coordinate the termination process with the trustee and the investment company. This is a lengthy process spanning several months.

2. Is there a time limit to terminate a plan?

The IRS generally requires distribution of all plan assets within one year of the plan's termination date.

3. If my plan is a money purchase plan or a safe harbor plan with required contributions, can I terminate the plan at any time?

Special timing may be necessary depending upon the plan design and specific features of your plan. If you are considering terminating your safe harbor plan or money purchase plan, your assigned administrator at APC can explain the timing issues affecting the termination of your plan.

4. What is the difference between freezing a plan instead of terminating a plan?

A frozen plan is an existing plan which does not allow for future contributions. and still requires a Form 5500. A terminating plan distributes all plan assets, and the plan no longer exists.

5. When are the Forms 5500 no longer required to be filed?

The Form 5500 is required to be filed for every year assets were in the plan. The final Form 5500 will show the ending plan assets with zero value.

6. When a plan is terminating, what happens to forfeitures in the plan?

The forfeitures will be used to reduce plan expenses, reduce employer contributions, or reallocate to participants as directed in the adoption agreement.

7. Is vesting affected by terminating the plan?

All participants with remaining account balances become fully vested upon trustee's declaration that the plan is to be terminated. The IRS requires all participants' vesting to be accelerated to 100% regardless of if the participant is currently employed or is a former employee.

8. Whose responsibility is it to ensure that the distribution forms are distributed and returned for all employees?

It is the plan trustee's responsibility to ensure that the distribution forms are distributed and returned for all participants with account balances.

9. Can I terminate the plan and only pay out participants who complete the distribution request form?

The plan is considered terminated once all of the assets have been distributed. All participants are paid out the same day. Until all of the distribution forms are completed, the plan payouts cannot proceed.

10. Whose responsibility is it to locate previously terminated employees for distribution?

It is the trustee's responsibility to maintain and search for addresses of the terminated participants with account balances.

11. When can a participant receive his or her distribution in the event of plan termination?

The participants' distribution requests can be submitted throughout the plan termination process. APC will coordinate with the investment company and trustee to determine the payout date for the plan termination.

Other Questions

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1. If one or more individuals have ownership in more than one company, must the plan cover all employees of all companies?

If one or more individuals have common ownership in more than one company, there may be what is considered a 'controlled group' or 'affiliated service group'. A controlled group is any two or more companies related through a common stock ownership in any of several ways. An affiliated service group is a group of related employers and refers to two or more organizations that have a service relationship and, in some cases, an ownership relationship, described in IRC section 414(m). The employees of all companies that are members of a controlled group or affiliated service group are deemed to be a single employer – this can have dramatic effects on nondiscrimination testing, deduction rules, coverage testing, contribution limits and top heavy rules. If you have any doubt as to whether or not you may have a controlled group or an affiliated service group, you should contact an ERISA attorney to help confirm the ownership of the companies.

Contact us through our website by clicking on icon below



Or call us at (631) 270-4525

For additional information about our company and services, please visit our website: www.associatedpension.com