Due to the economic impact of this situation, we have cash flow or remote work issues and may be a bit late in remitting 401(k) employee contributions. Is that ok?

*Update 4/29/2020 – DOL has issued guidance that they will not enforce late contributions made between March 1, 2020 and 60 days following the end of the National Emergency by employers affected by the COVID-19 outbreak, but cautions employers to act prudently and in the best interest of the employees and deposit contributions as soon as administratively feasible.

The answer here is no. The view being that, had the employees not made 401(k) contributions, the company would have paid those monies to the employee in the paycheck, therefore those monies must be deposited timely.

Generally, employers with less than 100 employees must deposit 401(k) contributions within 7 business days and employers with 100+ employees must deposit the 401(k) contributions within 3 business days or as soon as administratively possible. Companies which make late deposits will be required to provide lost earnings on the late contributions, report them on the Form 5500 and pay an excise tax, if applicable.

There have been instances in the past when the Department of Labor (DOL) has waived certain requirements but this is one area where leniency is unlikely.

I am working from home and don't have the ability to scan or fax documents. Can I electronically sign the Forms 5500 and 8955-SSA?

No. Electronic signatures are not accepted by the IRS; only copies of manual signatures are accepted. If you are unable to scan or fax, try taking a picture of the executed Form with your phone and emailing it to us. We will attempt to use it for filing purposes.

We want to help our employees; can we stop everyone's 401(k) deferrals for a time?

No, employees still need to complete a new election form to change their contribution.

We usually match employee contributions but cannot afford to do that right now. Can we stop?

Yes, if you are making discretionary match contributions, you may stop at any time. We suggest that you provide your employees with an announcement about that change. Feel free to contact us to provide you with a sample employee announcement.

What about safe harbor contributions? Can we stop those?

Yes, both safe harbor match and profit sharing contributions can be stopped.

Keep in mind, if you suspend safe harbor contributions, the plan will be subject to ADP discrimination testing for the plan year. If the contributions are found to be discriminatory, highly compensated employees may need to take a refund of some of their contributions. In addition, plans which are top heavy may be required to make a company contribution up to 3% of pay for employees.

Safe harbor match contributions: the company is required to provide a 30-day notice to employees and amend the plan document. The amendment will allow a temporary stop of the match and, when better times return, you will be able to get started again. Contact us and we will provide the employee notice and, if necessary, the amendment.

3% safe harbor non-elective contributions, most plan documents and safe harbor notices state that a decision will be made each year whether or not to make the contributions, so a plan amendment likely isn't needed. However, if you have been making the deposits each pay period, then a notice to employees must be sent. Contact us if you would like a sample employee announcement.

I may need to lay off some of my staff. What do I need to know?

If you lay off a significant percentage (typically greater than 20%) you may have a partial plan termination. In this event, all those affected would become fully vested in their account balance and eligible for a termination distribution. If employees are instead furloughed, they would continue to be active employees for plan purposes.

We have had to furlough our employees. What happens to participants' outstanding loans since they are no longer receiving a paycheck from the company?

This is one of the legislative changes that is part of the CARES Act – loan repayments may be delayed up to one year for employees directly affected by COVID-19.

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