

Safe Harbor 401(k) Plans

A Segment in Our Retirement Rescue Series

Common Mistake — Failure to provide Safe Harbor notice to eligible employees

Safe Harbor 401(k) plans differ from traditional 401(k) plans because they allow the employer to forego annual ADP & ACP nondiscrimination testing by making fully vested contributions for eligible employees. These contributions may take the form of a non-elective contribution for all eligible employees or a matching contribution for employees who make a salary deferral.

For more information on the minimum contribution requirements, please read [Ekon Explains: Safe Harbor 401\(k\) Plans](#).

Safe Harbor 401(k) plans must provide timely notice to eligible employees. This annual notice should be provided 30 to 90 days before the beginning of the plan year and include:

- Contribution information containing whether the employer will be making a matching or non-elective Safe Harbor contribution as well as any additional contributions made under the terms of the plan,
- Deferral information including how to make a salary deferral election and when eligible employees are allowed to elect a new deferral amount,
- Vesting and withdrawal information, and
- How to obtain additional plan information such as a copy of the Summary Plan Description.

If the safe harbor notice is not provided to eligible employees in a timely manner, an operational error has occurred. Appropriate correction is based on how the error impacts the individual participant. *Please note, safe harbor provisions cannot be added or removed during the Plan Year as a means of correction.*

A failure to provide the Safe Harbor notice typically occurs in two different scenarios.

Scenario 1:

If the employer fails to provide notice to an employee previously eligible for the Plan, the error is likely an administrative failure. In this scenario, the employee was otherwise informed of the Plan's features and opportunity to participate. Since the employee was not affected by this failure, the only corrective action required is to revise procedures to prevent the error from occurring in the future.

Scenario 2:

If an employee becomes eligible to participate but does not receive notice of his/her eligibility, the employer has failed to provide the employee with an opportunity to elect a deferral amount. In this situation, the employer needs to make two non-elective contributions to the employee's account for improper exclusion - one to fulfill the non-elective contribution requirement, based on the safe harbor provision, and a second for the missed deferral opportunity which is calculated by taking 50% of the greater of: 3% of the employee's compensation *or* the maximum deferral percentage that the employer matches at 100% (i.e.- a dollar-for-dollar match up to 4%).

To prevent this common error, review plan procedures for providing timely Safe Harbor notices. Keep detailed records regarding notice distribution. For eligible employees not participating, ensure they received timely notice of their eligibility to participate in the Safe Harbor 401(k) Plan.

For assistance in correcting a plan error, please contact Ekon Benefits at (314)367.6555 or info@ekonbenefits.com
