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## Suspending Employer 401(k) Contributions

As employers react to the economic uncertainty caused by COVID-19, retirement plan costs can become an important aspect of financial planning for the coming months. In this context, it is important for employers to understand the contributions they make to their retirement plans and rules regarding any suspension of employer contributions.

In general, but with certain limitations, an employer can suspend employer contributions to a 401(k) plan on a prospective basis. Special rules, for example, apply to “safe harbor” 401(k) plans and the process for suspending safe harbor contributions. Sometimes, employer contributions are subject to a 1,000 hours requirement. In such cases it is important to evaluate any potential changes early in the plan year before employees have worked 1,000 hours and accrued a benefit for the year. Depending on the types of employer contributions, the employer might need to formally amend the plan document and provide notice to employees in advance of the change. If an employer suspends or changes the employer contributions, the employer should confirm what impact (if any) the change will have on required IRS non-discrimination testing. To summarize these key items point-by-point:

1. **Plan Document Review.** Confirm what types of employer contributions are made to the plan and any rules regarding: amendment process, 1,000 hours requirement, safe harbor status, and notice requirements. It is also important to check the summary plan description and the annual safe harbor notice (if applicable).
2. **Plan Amendment Requirements.** Confirm whether a formal plan amendment is necessary to adjust employer contributions and who is authorized to adopt the amendment. Some types of contributions are discretionary while others are required under the plan document. Therefore, an amendment may or may not be required.

### Related Practices

COVID-19 Resource Center  
Employee Benefits & Executive Compensation  
Labor & Employment Relations  
Wage and Hour Compliance & Defense

3. **Legal Requirements.** Confirm any legal requirements that apply to the timing of employer contributions, amendments, and participant notices. Note, this is especially important for safe harbor plans.
4. **Notice Requirements.** Confirm whether a notice is required for any changes to employer contributions and distribute as applicable. The notice requirement might be pursuant to law or required by the plan document.
5. **IRS Testing Requirements.** Confirm whether changes to employer contributions will have an impact on annual IRS non-discrimination testing. For example, changing a safe harbor contribution may mean the plan will need to pass different IRS testing requirements.
6. **Service Providers.** In all instances, it is important to work with the service providers for the plan to avoid errors in implementing changes to employer contributions. For example, it is important to confirm any required updates to payroll or reporting feeds.

Each retirement plan is unique; thus, it is important to review the specific provisions of your retirement plan documents and seek appropriate advice to understand the requirements that may apply if you decide to suspend employer contributions. Analyzing potential options early in the year may provide more flexibility for making changes later if necessary.

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