

Timely Deposits of Employee Salary Deferrals

Stacy M. Eaton, QKA | Retirement Plan Benefits Consultant

COMPASS Q&A The Long + Short of It

At Compass, we know you have questions – but you also have limited time to seek out the answers. We get it, so we’ve done the work for you. We’ve compiled the research from trusted sources, and simplified the information. Here, we give you **Compass Q&A: Long + Short of It.**

THE QUESTION

When should employers get participants’ salary deferrals deposited into the company’s 401(k) plan?

THE SHORT ANSWER

As soon as possible, to comply with ERISA and the Department of Labor.

THE LONG ANSWER

Employers are required to remit elective deferrals which are deducted from employees’ paychecks into the 401(k) plan trust **as soon as administratively possible**. Failure to do so is a violation of the trust requirements under ERISA. It is a breach of the employer’s fiduciary responsibility if elective deferrals are not transmitted at the time they become plan assets.

- The fiduciary breach makes the employer liable for lost earnings suffered by the participants and creates a cause of action which may be brought by either plan participant or the Department of Labor (“DOL”).

- Late transmittal results in a prohibited transaction and subjects the employer to a 15% excise tax.
- Once the deferrals are remitted to the trust they are protected from claims of the employer's creditors.

In the past, it was thought that the employer could remit the salary deferral contributions by the 15th business day of the month following the month in which the contribution was withheld from employees' wages. However, the DOL has held that such date is not a "safe" date to rely upon.

Salary deferral contributions must be transmitted to the trust as soon as they can be considered "plan assets." Deferrals are considered plan assets **as soon as the employer can reasonably segregate those contributions from the employer's general assets.** For example, if the employer could have segregated the deferrals from the company's general assets within three business days, the maximum time period to transmit the deferrals would be three business days. When conducting plan audits, the Department of Labor has used the time period required to transmit income tax withholding as a standard. Thus, small employers typically only have a few days following each payroll before the deferrals become plan assets.

If the employer pays employees more than once per month, deferrals must be transmitted to the trust on a timely basis for each payroll despite the inconvenience.

The Department of Labor has an ongoing enforcement initiative regarding 401(k) deferral contributions. On Form 5500-Series, the Internal Revenue Service ("IRS") asks whether the employer failed to remit all salary deferral contributions on a timely basis. Answering "Yes" will cause the DOL to issue a letter requesting the employer to file under the Voluntary Fiduciary Correction Program or the DOL may audit the plan. In the past, the DOL has subpoenaed the records of service providers in order to determine which plan sponsors are out of compliance with the regulations.

The employer should review current office practices to determine whether 401(k) deferrals are being transmitted to the trust under these very restrictive guidelines.

If deferrals have not been remitted on a timely basis, please contact your consultant at Compass Retirement Consulting Group at (603) 778-9920.

"Bonding Requirements" was written by:

Stacy M. Eaton, QKA | Retirement Plan Benefits Consultant

Stacy has worked in the industry for over 17 years and has been with Compass going on her second year. In her free time, she enjoys making jewelry and spending time with her family!

