

Keeping Employees

SITUATION: Our industry is starting to recover from the recession, and we're concerned about retaining our qualified employees.

QUESTION: What can we do to discourage them from seeking opportunities with other employers?

ANSWER: You can make your 401(k) plan a more effective retention tool.

DISCUSSION: A recent study of employee benefit trends found that 72% of employees view retirement benefits as an important factor affecting their loyalty to their employers.* Offering your employees plan features they want and need can keep current plan participants satisfied and attract new participants.

What do employees need to stay happy? Information, for one thing. When employees understand their plan, they are more likely to participate in it and appreciate the benefits. Review your work force demographics. Targeting information to specific groups can be an effective way of giving employees the information they want. Also, retirement planning seminars and one-on-one or small group meetings with plan representatives are popular with many employees.

If you suspended or reduced your matching contributions during the economic downturn, now is the time to review that decision.

A Profit Sharing 401(k) Council of America (PSCA) study, *Impact of Economic Conditions on 401(k) and Profit Sharing Plans*, reports that 41% of the employers surveyed plan to restore a suspended or reduced match by the end of the first quarter of 2010. Another 5.4% had already restored their match at the end of 2009.

Statistics from the PSCA's *52nd Annual Survey of Profit Sharing and 401(k) Plans* can help you determine whether your matching contribution is competitive. Half of the employers surveyed had a 50 cent match (in 2008). The amount matched ranged from 3% to 10% of pay. The most common match was 50 cents per \$1.00 on the first 6% of pay — 29% of employers. The second most popular was a 50 cent match on the first 3% of pay (7.6%). A dollar-for-dollar match on up to 6% of pay was nearly as popular (7%).

Does your plan allow plan loans? According to the PSCA, 87.7% of 401(k) plans do. Particularly coming off the recession, employees may need to be reassured that they can access their 401(k) account assets if they really need to.

* *Study of Employee Benefits Trends*, MetLife, 2009

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It's Final!

Employers with small retirement plans take note. The U.S. Department of Labor (DOL) has finalized the safe harbor rule for depositing employee contributions. Retirement plans with fewer than 100 participants at the beginning of a plan year have to deposit employee contributions and plan loan repayments to the plan no later than the seventh business day after they are withheld or received in order to meet the optional safe harbor rule.

The safe harbor does not apply to plans with 100 or more participants. These

plans (and small plans that do not take advantage of the safe harbor) must deposit employee contributions and plan loan repayments as of the earliest date on which they can reasonably be segregated from the employer's general assets.

Whether or not your plan takes advantage of the safe harbor, make sure your payroll vendor or internal payroll department deposits all employee contributions and plan loan repayments in a timely manner. Penalties for noncompliance can be severe.

“Free Money” for Participants

Sharing information about the value of the federal income-tax saver's credit could be just the thing to persuade nonparticipating employees to join your plan — and motivate participants to increase their contributions. The “saver's tax credit” essentially repays a portion of the contributions that eligible employees make to their 401(k) or other qualifying retirement savings plan accounts. It's essentially “free money” for those who qualify.

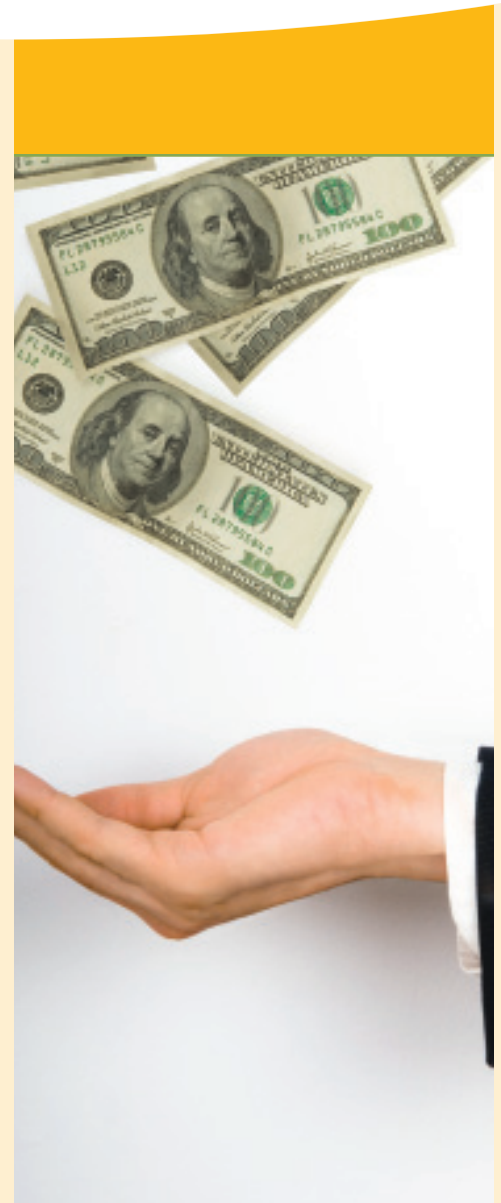
The credit is a percentage — 50%, 20%, or 10% — of up to \$2,000 in qualifying retirement savings contributions. The percentage depends on the employee's adjusted gross income (AGI) and filing status. The credit can be applied against an employee's federal income-tax liability but is nonrefundable.

Sharing information about the value of the saver's tax credit could benefit your employees. It would also provide an opportunity to increase awareness of the benefits your retirement plan offers.

Saver's Tax Credit Amounts for 2010

Credit Rate	with Adjusted Gross Income (AGI)		
	Married Joint*	Head of Household	Single
50% of Contribution Up to \$2,000	Up to \$33,500	Up to \$25,125	Up to \$16,750
20% of Contribution Up to \$2,000	\$33,501-\$36,000	\$25,126-\$27,000	\$16,751-\$18,000
10% of Contribution Up to \$2,000	\$36,001-\$55,500	\$27,001-\$41,625	\$18,001-\$27,750
Credit Not Available	More than \$55,500	More than \$41,625	More than \$27,750

* Each spouse may make a credit-eligible contribution. Certain retirement plan distributions reduce the contribution amount used to figure the credit.



Time to Review Your Fiduciary Liability Coverage?

Your fiduciary liability coverage may not be what you think it is. Many liability insurers have cut back on coverages that once were considered routine. So, you may want to review your fiduciary liability policies to make sure they still provide adequate protection. Below we answer some common questions about fiduciary liability coverage.

Do we need more coverage than the fidelity bond required by pension law? Yes. Retirement plan fiduciaries face personal liability exposure that will not be protected by a fidelity bond. The pension law (ERISA) generally requires that every fiduciary of an employee benefit plan and any other person who handles plan money be covered by a fidelity bond. The fidelity bond protects the retirement plan against misappropriation of funds by individuals handling the plan's assets. However, the fidelity bond does not protect against claims for losses sustained because of a breach of fiduciary duty.

What protection does fiduciary liability insurance provide? Fiduciary liability insurance provides protection for trustees and other plan fiduciaries in the event of a breach of fiduciary duty. These policies typically cover settlements or judgments. Wrongful acts that may be covered by fiduciary liability insurance include: negligent investment practices, failure to diversify investments, failure to file required reports, conflicts of interest, errors in computing eligibility, and inadequate instructions to beneficiaries that cause a loss of benefits.

Can the plan purchase the fiduciary liability insurance? Yes, however, the policy must allow the insurer to seek recourse against the fiduciary if it is determined that the fiduciary breached his or her duty to the plan. Commonly, the plan sponsor purchases the insurance as part of the overall compensation package of company executives who assume responsibility over the company's benefit plan.

What should we look for in a fiduciary liability insurance policy? Fiduciary liability insurance coverage varies widely from policy to policy, so it's important to check what is covered in your policy and determine if you need additional coverage.

Occurrence or claims-made policies. Most policies are claims-made policies that only cover claims made and reported during the policy period. Look to obtain an occurrence-basis policy that covers all acts that occurred during the policy period, no matter when claims are made.

Aggregation of wrongful acts. If multiple wrongful acts may be treated as part of an interrelated series of wrongful acts, negotiate to eliminate this provision. Otherwise, this aggregation provision may allow the insurer to allocate a new claim as part of a prior claim, which may limit what is paid on the claim.

Nonrecourse riders. If the policy is purchased with plan assets, the policy must allow the insurer to recover any paid losses from the fiduciary whose breach caused the loss. To protect themselves, individual fiduciaries can purchase nonrecourse riders. Under a nonrecourse rider, the insurer waives its subrogation rights against the fiduciaries in cases that do not involve fraud, willful neglect, or criminal wrongdoing.

Defense costs. To ensure adequate defense coverage, fiduciaries may want to purchase a separate defense policy, since many policies count any costs of defending an action against the overall policy limit. Also, a policy may require you to accept defense counsel appointed by the insurer. Purchasing a separate defense policy will allow you to name your own defense counsel.

Punitive damages or fines. Since most policies will not pay punitive damages, you may want to negotiate coverage of punitive damages. Even if a policy covers the 20% penalty tax on fiduciary violations, it may not cover the 15% initial excise tax on prohibited transactions.

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.



RECENT DEVELOPMENTS In Benefit Plans

401(k) Participants Hang Tight.

Research from the Investment Company Institute shows that participants continued to hold a favorable impression of 401(k) and similar retirement savings plan accounts through 2009 — despite the economic downturn. The vast majority of the participants surveyed said their opinion of 401(k) plans was very favorable (38%) or somewhat favorable (53%). In addition, only 5% stopped contributing to their plans in 2009 and even fewer (2.6%) took any withdrawals.

PBGC Finalizes Uniformed Services Regs.

The Pension Benefit Guaranty Corporation (PBGC) finalized proposed changes to its rules regarding the pension law's requirement that benefits guaranteed by PBGC become nonforfeitable on the date a plan is terminated. Essentially, the new regulation says that, as long as a plan participant who is in a uniformed service when a plan terminates is reemployed by the plan sponsor within the time limits provided under the Uniformed

Services Employment and Reemployment Rights Act of 1994, the PBGC will treat the participant as having been reemployed as of the plan's termination date. Thus, a participant will be considered to have the vesting service and benefit accruals he or she would have had as of the plan's termination date, even though the participant was away serving in the armed forces at that time.

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