



Plan Amendments Done Right

Insights

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Employers wishing to reduce labor costs during these rough economic times may be considering eliminating matching contributions or other employer contributions to their tax qualified profit sharing and 401(k) plans. While its perfectly legal to make such changes, make sure that the plan documentation is properly and timely amended. Plan documentation includes the actual plan document, which can include both an adoption agreement and master plan document for prototype arrangements, and the Summary Plan Description.

Tagging All The Bases

The plan document should be modified by an appropriate written plan amendment properly authorized by those given authority to amend the plan. The plan documentation should specify who is authorized to amend the plan. Usually this would be the employer's board of directors, company officers or an employee benefits committee. Often plan amendments are made during meetings and recorded in some form of written minutes. While this may be sufficient from a legal standpoint, a plan amendment should be reduced to a written and signed document in order to ensure compliance with the Internal Revenue Code requirement that tax qualified plans be in writing.

Amendments to tax qualified retirement plans generally should be made in the same plan year in which they are to become effective. But amendments concerning matching contributions that are made with each employee contribution in each pay period should only be on a going-forward basis and should not be retroactive.

For prototype plans, employers may not actually have immediate access to the master plan document, but it should be available from your recordkeeper. Most of the time, the employer will only have possession of the adoption agreement that was completed at the time the plan was implemented. Frequently, the provisions related to employer contributions, including matching contributions and profit-sharing formulas, will be found in the adoption agreement. In this case, the employer may simply amend the adoption agreement and will not need to modify the master plan document. It's important to properly notify the plan's recordkeeper and administrator of the changes.

Finally, plan sponsors must communicate changes to the plan's participants. Generally, these changes are required to be included in the plan's Summary Plan Description, which is appropriately modified with each amendment by sending a written summary of the amendment to each participant. Best practices generally call for the summary to be sent before the effective date of the amendment, but no later than 210 days after the effective date. Obviously, changes to expected employer contributions should be communicated to plan participants as soon as possible.

In today's economic climate, cost savings experienced by reducing employer contributions to its retirement plan can help avoid lay-offs. But these cost savings can be lost if employers don't follow the rules required to maintain the plan's tax qualified status.