

401(k) Plans Need to Play With a Full DEC

By Jay Derr, CPA

The Concept of DEC

Investing in a 401(k) plan can be comparable to playing a game of poker with people you've never met before. A proper balance of risk and reward is necessary to have success in either game. The best way for employers to reduce the risk of liability is to play with a full "DEC".

DEC is another way of saying *Document, Educate* and *Communicate*, which are three essential steps for an employer to reduce the likelihood of liability with regards to a 401(k) plan. The documentation process includes keeping records of every transaction and every decision. Any changes that are made to the plan should be documented and the paperwork should be kept as backup. Education includes making employees knowledgeable about the plan and how it works. Employees should be educated about the plan terms, features, and options at least once a year. The manner in which employees are educated should also be documented. Communication includes informing employees and keeping them updated on an ongoing basis. These three items will keep employees informed and help employers reduce their risk of liability.



Why DEC is Important

DEC is going to become even more important as the IRS is increasing enforcement on 401(k) plans. With the Department of Labor (DOL) hiring 700 new compliance auditors in 2010, more retirement plans are expected to be audited for compliance. The DOL collected \$12 billion in penalties during the eight year period from 2001 to 2008. During those eight years, more than two-thirds of all civil cases have resulted in monetary penalties or corrective actions. With the economy down, the DOL is hoping to earn revenue from penalties by performing additional audits.

Items Being Audited

The DOL historically has been mainly concerned with the time employers take to remit contributions to the plan and any administrative errors. The DOL states that contributions should be made "*as soon as the funds can be segregated from other payroll amounts*". This could be interpreted as being the same day that payroll is paid or within a few days. However, the DOL currently views any contributions submitted after the 15th day of the month following the payroll to be late.

In recent years, the DOL has focused audits to a much greater extent on "*Administrative errors*," primarily related to lack of proper documentation to support decisions and not maintaining attendance logs for any educational training. Some key administrative documents are the Summary Plan Description, Adoption Agreement, Investment Policy Statement, orientation materials for newly eligible employees, and attendance logs for 401(k) update meetings.



What Should You Do?

With regard to timely contributions, payroll providers allow employers to make wires directly to the 401(k) custodian once the payroll is approved. This process enables employers to review the payroll and deferral amounts and then submit the deferral check to the custodian as early as the payroll pay date.

Employers should keep a file that contains all documentation related to the plan, starting with its implementation and updated for any changes that were made to the current plan. By maintaining a paper trail, an auditor would easily be able to see how and why certain decisions were made concerning the plan and also be able to track when and how employees were informed. This file is a critical component for staying up to date with the most recent plan changes or amendments and maintaining current and accurate records.

With the DOL increasing enforcement of 401(k) plans, the likelihood of an employer having their plan audited is greatly increased. The best way to prevent liability is to review the plan and determine that all of the components are in place to be using a full DEC. When in doubt, having too much documentation is better than not having enough.