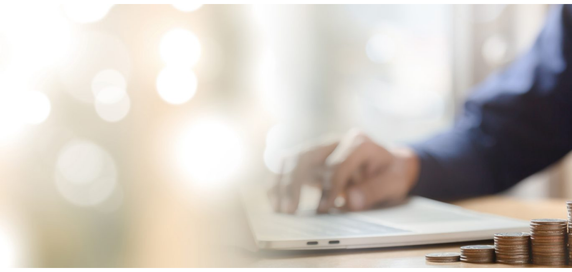
Important Reminder: Ensure Timely 401(k) Deposits to Stay Compliant



JANUARY 15, 2025 | BY: THE RETIREMENT PLAN ADMINISTRATION TEAM

Both the **Internal Revenue Service (IRS)** and the **Department of Labor (DOL)** prioritize ensuring that employee contributions to **401(k)** and **403(b)** plans are deposited on time. This includes employee contributions and loan repayments. Failure to comply can lead to serious consequences, including penalties, interest payments, and a breach of fiduciary duty.

Here's everything you need to know to stay compliant and avoid costly errors.

Deposit Deadlines: FAQs on Timely Deposits

When must employee contributions and loan payments be deposited into the plan?

The regulations require deposits to be made by the **earlier** of two timeframes:

1. **As soon as the amounts withheld can reasonably be segregated from company assets**, or
2. **No later than the 15th business day of the following month**.

Can I wait until the 15th business day to make deposits?

- **No.** The DOL focuses on the "as soon as possible" rule, generally enforcing a deadline of 3 to 5 days after payroll. If you've previously made deposits more quickly, the DOL will expect you to meet that faster timeframe consistently.

What about the 7-business-day safe harbor?

- For **plans with fewer than 100 participants**, the DOL allows deposits made **within 7 business days** of a pay date to be considered timely.
- For **larger plans**, this safe harbor does not apply, and deposits must be made as soon as possible.

A word of caution: Deposits beyond the safe harbor are subject to the general rule, so a deposit made 10 business days after payroll could be considered 5–7 days late.

Can I batch deposits at the end of the month?

No. The DOL requires deposits to be made for each payroll period. Batching deposits violates the regulation.

Can I deposit deferrals early?

Only in specific circumstances:

- You cannot deposit deferrals **before pay dates** if employees have not yet fully earned the compensation. For example:
- **Real-Time Payments**: If payroll reflects hours worked right up to payday, deposits cannot be made early.
- **Full or Partial Pay Period Delays**: If compensation is fully earned by the end of a previous pay period, early deposits are allowed.

Are sole proprietors and partners subject to the same rules?

Sole proprietors and partners must deposit deferrals **as soon as the amounts can be reasonably segregated** from partnership assets after their earned income is determined (generally after year-end). However, the deposit cannot be later than their individual tax filing deadline.

Consequences of Late Deposits

Failing to deposit contributions on time results in severe consequences:

1. Prohibited Transaction: Late deposits are treated as a loan from the plan to the company, which is impermissible under DOL rules.
2. Loss of Tax Advantages: Delays could jeopardize the tax-qualified status of the plan.
3. Interest Payments: Employers must reimburse employees for lost earnings.
4. Fiduciary Breach: Late deposits violate ERISA fiduciary duties.
5. Penalties:

- DOL Penalty: Up to 20% of late contributions.
- IRS Excise Tax: 15% of the lost earnings.

How to Ensure Compliance

1. Establish a Consistent Process: Set a recurring schedule to deposit contributions immediately after payroll.
2. Use Automation: Automate 401(k) and loan payment deposits to reduce delays.
3. Monitor Regularly: Audit deposit timelines to ensure compliance with DOL and IRS regulations.
4. Consult Professionals: Engage a financial advisor or third-party administrator (TPA) for guidance.

Need Assistance?

Timely 401(k) deposits protect your business, your employees, and your plan's integrity. If you're unsure about compliance requirements or need help correcting a late deposit, we're here to assist.

For any questions regarding this matter or any retirement-related inquiries, please feel free to contact Johnson O'Connor Retirement Plan Services.

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