

Timely Remittance of 401(k) Deferrals

Does your company sponsor a defined contribution plan such as a 401(k) plan? If so, when do you remit the contributions that your employees have elected to defer from their paychecks? Is it the same day you pay your employees? Is it a couple days after or even a couple days before? Maybe you stick to the tried and true practice of the 15th business day of the following month. Or do you remit the contributions a couple days after the pay date one payroll, a week after the pay date another payroll, and then a few days before the next payroll. If any or all of these scenarios appear reasonable, and you are unsure of which is correct, you aren't alone. **Many employers have a difficult time determining what is considered a late contribution remittance.**

The Department of Labor (DOL) Regulation 2510.3-102 states that contributions should be remitted to the plan by the employer "as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets." Furthermore, the regulation states that, in no event shall the contribution remittance "occur later than the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash."

Upon reading the regulation, it appears that a contribution is not considered late unless it is remitted after the 15th business day following the month that the employee is paid. However, in recent DOL audits, close attention has been paid to the timeliness of remittances. And contributions remitted before the 15th business day of the following month have been considered late in many cases. So, when should you remit your contributions to the plan?

Here's an example:

XYZ Company sponsors a 401(k) plan for the benefit of its 130 employees, all of whom participate in the plan. Employees are paid bi-monthly, on the 15th and last day of every month. XYZ uses a third-party administrator to process its payroll. XYZ also maintains a minimum cash balance of \$500,000 at all times, which is sufficient enough to cover its entire gross payroll obligation. Under these circumstances, given the cash balance and the use of an automated payroll services provider, the company should be remitting its 401(k) contributions on the same day that payroll is paid. Certainly contributions should be remitted no later than two or three days after the pay date. Now, say XYZ remitted its contributions on the pay date for every payroll during the year, except one. For the July 15th payroll, for example, it remitted contributions a week after the pay date. This may still seem reasonable, but if the DOL were to audit the XYZ's plan, this single contribution would most likely be considered late.

When should you remit your 401(k) contributions? As soon as possible and a consistent remittance schedule is key. If you can pay your employees and remit your employment taxes on the pay date, you should remit the 401(k) contribution that same day or shortly thereafter.