401k Plans on TriNet

Paperwork, Contributions, Testing and Safe Harbor
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Required Paperwork:

1. AAA- Adoption and Acceptance Agreement
2. Multiple Employer Plan Checklist for the Participating Employer
3. 401k Notice of Testing

In order for a plan to come into effect on the first of the month, all the paperwork must be submitted by the 8th, two months prior. Total cost to set up the plan is $500 on TriNet/Transamerica.

Deferrals and Contributions

Each employee can choose their deferral % for contributions into the plan. In 2021, the maximum employee contribution is $19.5k per year for an employee under the age of 50, and $26k for an employee over the age of 50. Compensation is capped at $290k, for calculation purposes.
An employer can choose not to contribute to the plan. If the employer does contribute, the minimum employer contribution is 25% of the first 1% deferred. The employer can set a cap on contributions as well.

So for example, if someone is 55 years old, is earning $450k and wants to max his contributions, he would work backwards to calculate the deferral percentage, taking the cap into consideration. In this case, he would defer 9% (26/290=0.089) If the employer is putting in the minimum contribution, the company would contribute approximately $725/ year (2900 *25%.)

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Testing Requirements

In order to ensure that all employees of a company enjoy the benefits of the 401k plan, a company must pass testing requirements or adopt a Safe Harbor Plan. The testing looks at contributions of Highly Compensated Employees, along with the rest of the employees.

Highly Compensated Employees (HCE):

- Employees who have greater than 5% ownership in the company, or who are related to someone with greater than 5% ownership
- Employees whose annual compensation in the prior year exceeded a threshold ($130k or more.)

There are 2 annual nondiscrimination tests, which will be done annually, under a regular 401k plan:

1. ADP Test- compares the deferral % of highly compensated employees (HCE) with the deferral % of non-highly compensated employees (NHCE.) The % deferral of HCE cannot be greater than 2% of the average deferral of NCE.

2. ACP Test- compares the matching contributions made for HCE in relation to matching contributions for NHCE.

Generally, plans must also pass **a third compliance test, the Top-Heavy test**, each year, or else they are subject to additional employer contributions to keep the plan in qualified status. The top-heavy test is a little different from ACP and ADP because it focuses on "key employees" within an organization, rather than HCEs.

Ultimately, whether a plan passes discrimination testing is a function of which employees participate by deferring income to their 401(k) accounts, how much they defer, and how much a company contributes. As it is extremely hard to predict the employees' contributions, it is impossible to predict whether the plan will pass the tests or not.

If the company fails the discrimination test, the company will either need to put money into the NHCE account (following a specific formula to calculate amount). If the company does not want to pay the money, Trinet will send HCEs money from their plans, as a refund of excess money they contributed.

Transamerica has a free testing on demand feature, which a company can run at any point to see what is happening with contributions/ compliance with the tests.

It is important to note that in addition to mandatory NHCE contributions, the IRS can impose non-compliance penalties and punitive damages when the plans fail to pass the tests, at their own entire discretion.

One can change a plan from regular 401k to Safe Harbor by initiating an amendment, effective January 1. The IRS requires a 30 day written notice to employees. In order for them to get the notice in December, the employer must get paperwork to the plan administrator in October. There is a flat fee of $100 on Transamerica for the amendment.

401k Safe Harbor Plans:

Under the Safe Harbor Rule, there are no consequences to the plans failing the tests, but the employer has to deposit money into the plan.
The employer has the choice of setting up one of 2 different plans:

1. Enhanced Match Plan- Employers must match at least 100% of the first 4% deferred by each employee. The match is between 4 and 6%.
2. Non Elective Plan- Employer contributes 3% of compensation to all employees eligible for the plan, regardless of their deferral election.

Unlike in the traditional plan, 100% of contributions under Safe Harbor plans vest immediately. (This serves as a disadvantage to the company if an employee leaves soon after joining, as he takes all $ contributed to the plan.)
Safe Harbor Plans always start on January 1, so we usually start the paperwork at the end of October.