

How Soon Must Participants' 401(k) Deferrals Be Deposited?

Recently, the Department of Labor ("DOL") has issued regulations requiring an employer sponsoring a 401(k) plan to deposit the employees' salary deferrals within a few days of withholding the deferrals.

The DOL Regulation & 2510.3-102(b)(1) requires that 401(k) plan sponsors remit contributions to the trust the earlier of:

- 15th business day of the month following the month in which salary deduction occurred or,
- as soon as administratively feasible (the earliest date the contributions can be reasonably be segregated from the employer's general assets).

Therefore, a plan may use the 15th business day limit only if is not administratively feasible to do it sooner.

In evaluating the earliest reasonable date the DOL considers the frequency with which the employer makes payroll, deposits the payroll taxes, etc. to be a relevant factor. Also the **pattern** established by the employer is a relevant factor if deposits become less frequent.

The regulations include an example of a small company needing only two business days following the date of withholding to make the deposit in view of the relatively small number of employees and the fact that they are paid from a single location.

We strongly advise that you deposit the contributions within two to three days from the date of withholdings in order to comply with the "as soon as administratively feasible" requirement.

Failure to timely transmit contributions could trigger liability under the law for failure to hold the plan assets in trust. Employers may be required to compensate the trust for gains and losses from the use of plan assets and could be subject to excise tax and other penalties.

Please feel free to contact our office at (818) 587-4255 if you have any questions.