



How Do We Stop Our Discretionary Matching Contribution?

Facts

My company sponsors a 401(k) plan that provides for a discretionary matching contribution, which we deposit each pay period along with employee deferrals. Given the economic uncertainty, I'm focused on doing what I can to ensure adequate cash flow to maintain operations, including making payroll. That might mean we make the decision to suspend the matching contributions.

Question

For companies like mine that are depositing matching contributions on a pay period basis, what do we have to do to stop our match?

Answer

Like you, many business owners are facing these types of decisions right now – looking for options that protect business health and employee health as best they can. As sponsors navigate the current environment many are asking how and when to stop employer discretionary contributions to their retirement plans. We should note that the rules are different depending on whether a plan is a safe harbor 401(k) plan or not. This QOTW focuses on non-safe-harbor plans, but we have a separate one for safe harbor plans [here](#).

The short answer is that you can definitely suspend your matching contributions. But, as you probably suspected, there are some additional details to cover. These include participant communication and compliance considerations.

Participant Communications

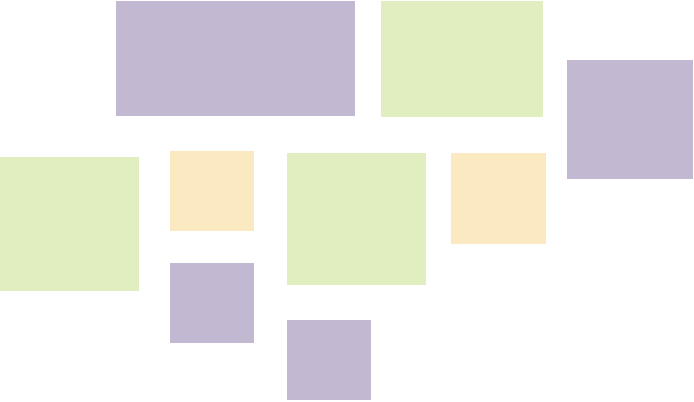
An ERISA attorney we know likes to say, “Well informed participants are much less likely to sue.” When it comes to communicating the suspension of a matching contribution, those are useful words to keep in mind. The reason is that, surprisingly, there might not be any hard and fast legal requirement to communicate here.

Discretionary Match

If your plan provides for a discretionary match, the simple answer is there is no required notice to participants. That said, you might have an employee PR issue on your hands, especially if some participants who are experiencing financial concerns of their own are only continuing to defer because of the match. Voluntary communicating your decision can stave off negative feelings and allow participants to make changes to their deferral rates with this new knowledge in mind.

“Promised” Discretionary Match

This can be a murky area. Although the plan document states the match is discretionary, some sponsors prefer to announce the match formula at the beginning of the year to encourage participation. While this is a great strategy, it begs the question – does that somehow change the match from discretionary to mandatory? From a



compliance standpoint, the plan document reigns, so you would not be required to provide a notice. For the same reasons noted above, however, it's probably better to inform participants when changing or suspending a previously announced match.

Fixed Match

Things are a little more interesting here. By “fixed match,” we are referring to a required match that is written into the plan document. Changing or eliminating a fixed match requires a formal plan amendment, which in turn, requires what is called a Summary of Material Modification. The SMM basically updates the information that is included in the Summary Plan Description. But here is what is a bit counterintuitive. The SMM is not required to be distributed to participants until 210 days after the end of the year. That means you aren't required to tell participants about a match suspension in 2020 until July 2021. That isn't especially helpful if they need to modify their deferral elections now. As with the other two scenarios, although an earlier notice regarding the match change isn't required here, it may be advisable to inform participants by providing them with the SMM when you make the actual change rather than waiting for many months after the fact.

Compliance Considerations

While knowing your communication requirements is an important priority, there are some compliance aspects to consider.

True-Up Contributions

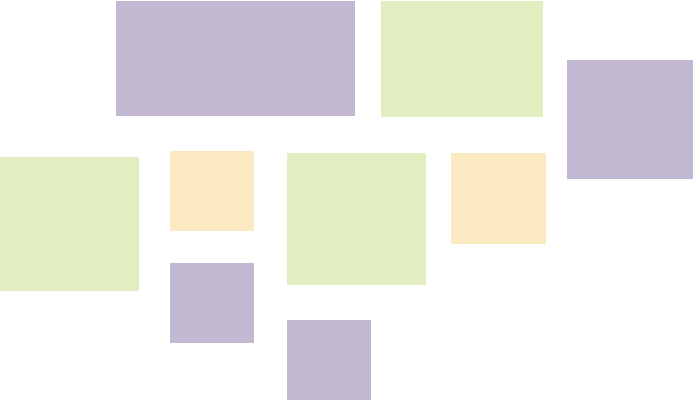
If your plan document specifies that your match must be calculated on a pay period basis, you can probably skip this section. However, many companies operationally choose to deposit their match each pay period even though the plan document specifies that it is to be calculated on an annual basis. There is nothing wrong with that, but it does raise some additional compliance questions. The first relates to so-called true-up contributions. We cover them in more detail [here](#). The gist is that because all participants do not defer at the same rate and may change their elections over time, eliminating the match mid-year would likely result in slight variations in the actual match formula. If your plan requires the use of a uniform formula for all participants, this could mean that certain participants must receive a true-up contribution to bring things in line.

Non-Uniform Match Formula

If your plan does not require the match formula to be uniform for all participants, that could be a way to avoid making the true-up contributions described above. But that would also trigger additional nondiscrimination testing. This is meant to limit a company's ability to provide a really rich match for the highly compensated employees while providing something much less robust to the non-HCEs. Even though that is not what is happening in the present environment, we are still stuck with the requirement.

Top Heavy

When a plan is [top heavy](#) (i.e. more than 60% of total assets are in the accounts of certain owners and officers), the company is generally required to make a 3% of pay contribution to all employees who are eligible for the plan (and are employed on the last day of the year). Any other company contributions offset that amount dollar-



for-dollar. If your plan is top heavy, that means discontinuing your match might not actually save you that much in the long run. In this situation, you may garner more goodwill from participants by retaining the match even though it won't cost you any more.

Note that the actual top-heavy minimum contribution may be less than 3% if the benefits provided to all key employees (including deferrals) are less than 3% of their compensation.

Reinstating the Match

If you anticipate reinstating the matching contribution in 2021, it is a good idea to also look into the method your plan uses for certain other annual testing. Without getting too far into the weeds, one testing method bases current year results on [last year's averages](#). If your plan uses that method and you suspend the match in 2020, it will negatively impact your test results in 2021. In this scenario, you would have until the end of 2021 to amend the plan to change your testing method, but that extended timeframe also makes it easier to forget to review this once the dust settles.

Deposit Timing

Unlike safe harbor matching contributions, other types of company match do not have any [quarterly funding requirements](#). That means you can postpone the decision to make (or not) a matching contribution for 2020 until the due date of the 2020 company tax return (with extensions). If your plan provides for a fixed match, contributions continue to accrue absent a plan amendment, so more immediate action may be in order. However, if the match is purely discretionary (whether on a plan year or pay period basis), the longer deposit deadline offers additional flexibility.

We're here to help answer any questions you may have regarding matching contributions, impacts on testing, formula options, etc. With each unique business comes a unique set of plan questions and concerns; [DWC](#) has you covered for all of them.

For more information related to the impact of Coronavirus on retirement plans, checkout our [FAQs](#).

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