



To Be or Not to Be...Safe Harbor?

What is a Safe Harbor 401(k) Plan?

A safe harbor 401(k) plan is a traditional 401(k) plan that allows a plan sponsor to automatically pass certain annual non-discrimination tests to ensure compliance with IRS regulations if specific contribution, vesting, and participant notice requirements are met.

Benefits of a Safe Harbor Plan

A safe harbor plan that is established where the only contributions are safe harbor employer contributions, employee elective deferrals, and rollovers will:

- Enable all employees, including highly compensated employees (HCEs) to defer up to the IRS maximum contribution amount to their 401(k) plan. In 2022, the maximum is \$20,500 or \$27,000 if over the age of 50.
- Exempt the plan from top heavy testing.
- Eliminate Average Deferral Percentage (ADP) and Average Contribution Percentage (ACP) non-discrimination testing.

Requirements of Safe Harbor Plan

To leverage a safe harbor provision, the employer must satisfy several requirements. The most important requirements are:

1. An employer must make a safe harbor contribution, that is immediately 100% vested, of:
 - a. A matching contribution equal to 100% of the amount of the employee's elective deferral up to 3% of compensation and 50% of the elective deferrals that exceeds 3% up to 5% of compensation, or
 - b. A matching contribution that is 100% of the amount of the employee's elective deferral up to 4% of compensation, or
 - c. A non-elective contribution of 3% based on compensation to all employees eligible to make elective deferral contributions.
2. Generally, employees must receive a safe harbor notice at least 30 days but no more than 90 days prior to the beginning of each plan year in which the safe harbor is in effect.

The Retirement (k)oncierge Group can help you evaluate whether a safe harbor 401(k) plan will work for your organization. We can assist you with plan design and provide benchmarking comparisons to make sure your benefits are competitive with the marketplace.



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The following scenarios illustrate how utilizing a safe harbor plan design can impact the employee deferral amount that eligible employees can defer into the plan.

Scenario 1 – 401(k) Plan with no Employer Match

In this scenario, the average deferral rate for non-highly compensated employees is 2%. Without a safe harbor feature, the Plan is subject to nondiscrimination testing and as a result, the highly compensation employees (Owner 1 & 2) are only able to defer 4% of their compensation.

	Employee Compensation	Pre-tax Deferral %	Pre-tax Deferral Amount	Total Contribution
Owner 1	\$155,000	4%	\$6,200	\$6,200
Owner 2 (over 50)	\$92,000	4%	\$3,680	\$3,680
Employee 1	\$36,000	0%	-	-
Employee 2	\$25,000	4%	\$1,000	\$1,000
Employee 3	\$20,000	0%	-	-
Employee 4	\$15,000	4%	\$600	\$600

Scenario 2 – Safe Harbor 401(k) Utilizing a Basic Safe Harbor Match

This scenario utilizes the basic safe harbor match of 100% of the first 3% of compensation deferred and 50% of the next 2% of compensation deferred. Only eligible employees who make elective deferral contributions will receive the safe harbor employer match.

	Employee Compensation	Pre-tax Deferral %	Pre-tax Deferral Amount	SH Match 100% of first 3%	SH Match 50% of next 2%	Total Contribution
Owner 1	\$155,000	13%	\$20,500	\$4,650	\$1,550	\$26,700
Owner 2 (over 50)	\$92,000	29%	\$27,000	\$2,760	\$920	\$30,680
Employee 1	\$36,000	5%	\$1,800	\$1,080	\$360	\$3,240
Employee 2	\$25,000	4%	\$1,000	\$750	\$250	\$2,000
Employee 3	\$20,000	4%	\$800	\$600	\$200	\$1,600
Employee 4	\$15,000	4%	\$600	\$450	\$150	\$1,200

Scenario 3 – Safe Harbor 401(k) Utilizing a Safe Harbor Non-Elective Contribution

This scenario utilizes a non-elective safe harbor contribution of 3% of the employees' compensation. All eligible employees receive a 3% non-elective contribution regardless of whether or not they defer.

	Employee Compensation	Pre-tax Deferral %	Pre-tax Deferral Amount	SH Non-Elective	Total Contribution
Owner 1	\$155,000	13%	\$20,500	\$4,650	\$25,150
Owner 2 (over 50)	\$92,000	29%	\$27,000	\$2,760	\$29,760
Employee 1	\$36,000	0%	-	\$1,080	\$1,080
Employee 2	\$25,000	4%	\$1,000	\$750	\$1,750
Employee 3	\$20,000	0%	-	\$600	\$600
Employee 4	\$15,000	4%	\$600	\$450	\$1,050



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