

SECURE 2.0 Update:

- **Safe Harbor Nonelective Contribution (SHNEC) –** Employers may amend the plan document to add the 3% SHNEC formula as late as 30 days before the end of the current year. The SHNEC is effective retroactively to the first day of the current year. For example, an existing 401(k) plan with a January 1, 2022 to December 31, 2022 plan year may be amended on or before November 30, 2022 to add the 3% SHNEC provisions effective January 1, 2022.
- **Late Adoption of SHNEC –** If you miss the end of year cut-off, the plan document may still be amended to add the SHNEC for the current plan year; however, the required contribution increases to 4%. Continuing the example from above, an existing 401(k) plan may be amended after December 1, 2022 (and no later than the due date of the company tax return for 2022), to include the 4% SHNEC for the 2022 plan year. If the company return (including extensions) for 2022 is due September 15, 2023, that is the latest date that the amendment may be adopted for the 2022 plan year.

Safe Harbor

A Safe Harbor 401(k) plan is an option many plan sponsors consider when evaluating their plan. With a Safe Harbor plan, the company is required to make a contribution to each participant within the plan. This allows the plan to pass the Actual Deferral Percentage (ADP) test and may allow a plan to automatically pass the Actual Contribution Percentage (ACP) test. It may also satisfy top-heavy minimum required contributions. To qualify as a safe harbor, a plan is required to meet certain criteria and follow safe harbor rules.

Required Employer Contributions

1 Safe Harbor Non-Elective

- Must equal a minimum 3 percent of compensation to all eligible employees
- Can be utilized as annual contribution
- May elect a “safe harbor maybe” approach
- Determine each year if the plan will fund required minimum of 3%
- Plan would need to amend each year if the plan funds Safe Harbor contribution. If not funded, ACP, ADP and top heavy testing would be required

2 Safe Harbor Match

- The basic formula is 100% of the first 3% of employees deferred compensation plus 50% of the next 2% of employees deferred compensation
- Can use an enhanced formula that must be at least the same as the basic formula. Example: 100% of the first 4% of employees deferred compensation
- Match can be done on an annual or per-payroll basis

Safe Harbor Source Rules

- 100% immediate vesting of the contribution
- Restricted from in-service withdrawal until age 59 ½
- Cannot have any allocation conditions (such as last day or 1,000 hours)

Additional Considerations

- The Safe Harbor plan design requires an employer to make safe harbor contributions for an entire plan year unless a mid-year start up plan
- If a discretionary match is offered, additional conditions are required to satisfy the ACP test

Qualified Automatic Contribution Arrangement (QACA) Safe Harbor

- Benefits involve automatic enrollment for participants and a less expensive match for the employer
- All eligible participants must receive at least a 3% SH Nonelective contribution
- The basic formula is 100% of the first 1% of employees deferred compensation plus 50% of the next 5% of employees deferred compensation
- Vesting can be up to a 2 year schedule