



PENSION STRATEGIES

QUALIFIED PLAN DESIGN & ADMINISTRATION

Strategic Update: Ideas, news and tips from Pension Strategies
August 2016

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Defining Employee Plan Participants

Employer's assessing their retirement plan should consider all possible employees who may be participants. Who is covered by the plan is a complex area of the law. Errors or intentional exclusion can result in expensive consequences from penalties to plan disqualification and taxation. Below are frequently asked questions about employee inclusions:

How do I know if an individual is an employee of an organization? Employees are defined as individuals who receive income from the sponsor company that is subject to social security and Medicare taxes. Independent contractors are not eligible for the sponsor's plan. Within a tax year an individual may be considered either an employee or an independent contractor but not both.

Can certain employees be excluded from plan participation? Exclusions are defined in the plan document and may include non-resident aliens, some union employees subject to collective bargaining, certain highly compensated employees and employees who don't meet an allowable minimum age or initial service requirement.

What about part time employees? An individual who works less than one thousand hours per year is considered a part time employee and may be excluded from plan participation. This must be written into the plan as well.

Are there other potential employees to consider? If companies, by common ownership are determined to be either a controlled group or affiliated service group of employers then employees from all the companies may be eligible for the plan. Spouses, each owning their own company, may be treated as commonly controlling both companies even though the companies functionally have nothing to do with each other.

Determining who is and who is not an eligible employee for plan participation is a complex area that calls for professional review and advice. Legal counsel should be obtained whenever there is uncertainty in this area. For additional information from the IRS, check out this [link](#).

Case Study: Participant Overdistribution

In a recent court case a former employee/participant in a pension plan was properly paid her accrued benefit. A short time later she was paid an additional benefit by mistake. The plan

asked her to return the overpayment and she refused. Since this plan was covered by ERISA the trustee sued the former participant in federal court. The judge found that by holding assets of the plan the former participant was a fiduciary to the plan and responsible for losses of plan assets under her control. This is a very unusual and creative approach to the occasional participant over distribution Problem.

Upcoming Deadlines

September 15th
Funding Deadline for Calendar Year Plans

October 1st
Deadline to Establish a New Safe Harbor 401(k) Plan for 2015

October 15th
Form 5500 Filing Deadline for Calendar Year Plans

[Learn more about Pension Strategies](#)

Please let us know if you would like us to address any topics in upcoming issues of Strategic Update. We're here to be your best resource in the Retirement Planning industry.

Sincerely,
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