



401(k) Plan Fix-it Guide: Avoiding Common Problems

ERISA Fiduciary Duties/IRS “Qualification”

- Act Section 404(a)(1)(D) A fiduciary shall discharge his duties to a plan solely in the interest of the participants and beneficiaries and –
 - In accordance with the documents . . . governing the plan.
- IRS – “Qualification failure” means any failure that adversely affects the “tax-qualified” status of a plan.
 - “Operational failure” – Failure to follow the terms of the plan.



Common Plan Document Issues

Eligible Employees



Always ask, “Does your Company have any W-2 employees who are not eligible for the plan?”



Generally, the answer will be “yes”

Eligible Employees

Leased Employees

Individual works for your client on a substantially full-time basis, but is paid (i.e., gets his/her W-2) from another business (e.g., a temp agency)

After one year (at least 1500 hours [@ 30 hours per week]), the individual is considered a Leased Employee

Ask “Does your Company have any Leased Employees?”

Leased Employees generally should be excluded

Leased Employees count in minimum coverage test, but should not be a problem as long as Leased Employees are less than 30% of workforce

Conditions of Eligibility

Hours of Service Method –

Number of Hours of Service required – Not to exceed 1,000 Hours of Service (e.g., 20 hours per week)

Count actual hours, or