

SALES NOTE: SEVEN DAY DEPOSIT REQUIREMENTS

January 21, 2010

ERISA rules require employee deferrals [and loan payments] for most retirement plans be deposited as soon as they can be identified and set aside but in no case later than fifteen days following the end of the month in which the amounts were withheld. Rarely, if ever, would the 15th of the month rule apply. On audit, you would have to convince the Department of Labor that it took you weeks to figure out the amount of your employee deferrals. Most employers should be able to withhold and segregate the deferrals within two days which means the deposit must be made in two days.

Effective January 14, 2010 the DOL revised the deposit rules. [ERISA Regulation 2510.3-102] Under the revised deposit safe harbor rule employers maintaining small plans (plans with less than 100 participants) have seven business days to deposit employee deferrals (and loan payments) into the retirement arrangement. This provides more time than the standard "as soon as administratively possible".

Penalties for non-compliance of the deposit rules are significant. For those plans that file IRS Form 5500, one of the questions asked is whether you made timely deposits. There is a process in place for correcting untimely deposits. Indicating on your 5500 that you did not deposit timely will raise an audit flag with the DOL.

Practice Tip: Timely remission of employee deferrals and loan payments is a high priority for the IRS and Department of Labor. Discuss this issue with small business owners to ensure they understand and comply with the requirements.

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