



# 401(k) Plan Policy: Eligibility and Contributions

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## Practice Note

In defined contribution retirement plans, including private-sector 401(k) plans, the benefits payable to a participant at retirement is determined by the amount of contributions made to the plan on that participant's behalf, plus investment earnings on those contributions over time. The design and operation of tax-qualified retirement plans, including defined contribution plans, are strictly and extensively regulated by two federal laws: the **Internal Revenue Code** ([www.irs.gov/taxpros/article/0,,id=98137,00.html](http://www.irs.gov/taxpros/article/0,,id=98137,00.html)) (primarily Part I of Subchapter D of Chapter 1) and the **Employee Retirement Income Security Act** ([www.shrm.org/legalissues/federalresources/federalstatutesregulationsandguidanc/pages/employeeetirementincomesecurityact\(erisa\)of1974.aspx](http://www.shrm.org/legalissues/federalresources/federalstatutesregulationsandguidanc/pages/employeeetirementincomesecurityact(erisa)of1974.aspx)), or ERISA (codified in part at 29 U.S. Code Chapter 18). State and local governments are precluded from passing laws and regulating private-sector pensions by ERISA preemption. See **Designing and Administering Defined Contribution Retirement Plans** ([www.shrm.org/TemplatesTools/Toolkits/Pages/DesigningandAdministeringDefinedContributionRetirementPlans.aspx](http://www.shrm.org/TemplatesTools/Toolkits/Pages/DesigningandAdministeringDefinedContributionRetirementPlans.aspx)) and **Introduction to the Human Resources Discipline of Employee Benefits** ([www.shrm.org/TemplatesTools/Toolkits/Pages/EmployeeBenefits.aspx](http://www.shrm.org/TemplatesTools/Toolkits/Pages/EmployeeBenefits.aspx)).

Administering a 401(k) plan that allows employee contributions of any type requires monitoring limits on those contributions and testing the plan to make sure that employee contributions are not disproportionately made by highly compensated employees.

Employers may require an employee who is eligible to participate in a 401(k) plan to complete a year of service before becoming eligible to receive employer contributions, even if the employee becomes eligible to make employee contributions at an earlier date. The sample policy below includes such an eligibility requirement and contains provisions relating to employee and employer contributions.

Employers should be aware, that, pursuant to the landmark 2013 U.S. Supreme Court ruling in *United States v. Windsor* ([www.law.cornell.edu/supct/cert/12-307](http://www.law.cornell.edu/supct/cert/12-307)), federal laws governing employee benefits plans require companies to treat employees' same-sex and opposite-sex spouses equally for purposes of the benefits extended to spouses. Consequently, organizations with 401(k) plans must recognize same-sex spouses for purposes of determining death benefits, and same-sex spouses must consent to beneficiary designations. See **Administering Employee Benefits with Regard to Same-Sex Spouses** ([www.shrm.org/TemplatesTools/Toolkits/Pages/AdministeringEmployeeBenefitswithRegardtoSame-SexSpouses.aspx](http://www.shrm.org/TemplatesTools/Toolkits/Pages/AdministeringEmployeeBenefitswithRegardtoSame-SexSpouses.aspx)).

**Purpose**

[Company Name] provides a 401(k) Retirement Savings Plan (the Plan) to help employees accumulate financial resources for retirement.

**Eligibility**

To be eligible to join the 401(k) Plan, an employee must complete 12 months of service and be 21 years of age or older. The employee may join the Plan on the first day of the calendar year quarter following completion of the first year of service—January 1, April 1, July 1 or October 1. Prior to eligibility, the employee will be given the Plan's summary plan description for review and all necessary forms to complete to participate in the Plan.

**Contributions**

Subject to statutory limits on tax deductibility, the Plan allows employees to elect how much of their salary they want to contribute to the Plan and to direct the investment of their funds into professionally managed investment funds. An employee is fully vested in his or her own contributions and entitled to those contributions upon termination of employment regardless of the length of employment. The company may, but is not required under the Plan, to make a matching contribution to employees' contributions at plan year-end. At the end of five years of employment, an employee is fully vested in the company's matching contributions.

**Plan Termination**

The company reserves the right to terminate the Plan at any time.

**Express Requests**

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