

## Important Information Summary

### 401(k) Profit Sharing Plan

#### **Election Forms**

Your 401(k) Profit Sharing Plan permits eligible participants to choose or change the amount of compensation they wish to defer into the plan or to opt out of the Plan entirely. Please distribute a copy of the enclosed Contribution Election Form to each eligible participant. If you are uncertain as to which employees will be eligible in 2023, please feel free to contact our office and we can assist you in making a determination. It is important for these elections to be completed in a timely manner so that they will take effect for the first pay period in 2023. In addition, if your plan defines compensation as including bonuses and overtime, you are required to apply the same withholding election to this compensation. Failure to properly withhold elected amounts can be costly and require the employer, not the employee, to make up these missed deferrals and earnings.

#### **Deferral Deposits**

It is extremely important that participant deferrals are deposited to your 401(k) Profit Sharing Trust in a timely manner once they are segregated from a participant's compensation. The Department of Labor scrutinizes this issue closely, and their position is to consider delinquent deposits as a prohibited transaction, which may result in an excise tax on the employer. If this occurs, the employer will be required to make the participants "whole" for the lost investment opportunity on any delinquent deposits as part of the correction process.

The Department of Labor has established a safe-harbor deadline for an employer to deposit the participant deferrals. The DOL will consider deferral contributions deposited to the Trust no later than the 7<sup>th</sup> business day following the date of withholding to be in compliance. Please note that since the safe harbor specifically applies to plans with under 100 participants, larger plans must comply with DOL basic rules (that is, the earliest date the contributions can be reasonably segregated, but in no event greater than 15 business days).

A plan that fails to comply with the safe harbor does not automatically violate the DOL rules. However, the DOL will likely challenge any deferral deposits made beyond the safe harbor. With this in mind, we recommend that you avail yourself of the 7-day safe harbor to avoid potential DOL penalties.

#### **Top-Heavy Requirements**

Your plan may be what is known as "top-heavy", which means that 60% or more of the assets belong to "key participants" (generally, the company owners). When a plan is top-heavy, certain laws and regulations come into effect. A very important top-heavy requirement is that a company contribution must be allocated to all non-key (non-owner) participants for a year in which a key participant "benefits". For your 401(k) plan, a key participant is considered benefiting if he or she makes a deferral deposit. The top-heavy rules can be complex. Please contact our office if you wish to discuss these rules in more detail.