

# 401(K) PLAN GUIDE

## You Hired Employees, Now What? and How To Avoid IRS Taxes & Penalties

### **Presented By**

LEADING RETIREMENT SOLUTIONS  
Providing 401(k) Administration & Investment Solutions

### **Featured Speaker**

Kirsten Curry, Attorney At Law

## OUR SPEAKERS & PRESENTERS

### **Kirsten L. Curry, Attorney At Law**

- Curry is the President and founder of Leading Retirement Solutions (LRS). LRS was developed for entrepreneurs, by entrepreneurs, with the goal of providing Retirement Plan solutions for business owners. She is an ERISA attorney and industry leader with respect to 401(k) Plans, including Plans that hold private stock. Curry has assisted over 4,000 clients with their company sponsored Retirement Plans.
- A seasoned entrepreneur, Curry understands the many challenges entrepreneurs experience. She is passionate about providing entrepreneurs with creative solutions and support at all stages of their business growth. In addition to her zeal for growing and supporting businesses, Curry is also passionate about keeping current with our fast changing industry and serves as President of the regional ASPPA chapter. Additional information about Curry can be found at [www.linkedin.com/in/kirstencurry](http://www.linkedin.com/in/kirstencurry)

### **Vanessa Alcantara, Retirement Plan Relationship Manager**

- Vanessa is Leading Retirement Solutions' Retirement Plan Relationship Manager and is responsible, in part, for helping clients with their Plan as it emerges and grows. Vanessa consults with clients regarding many different aspects of their Plan including eligibility, enrollment, adding investment options such as mutual funds, ETFs and other non-traditional investments like real estate, hard money lending and more.

**Your company sponsors a Retirement Plan. You have hired employees, now what do you do? Our webinar will help you offer the Plan to your employees and meet IRS and DOL regulatory requirements, keeping your Plan in compliance.**

- Why Is Offering the Plan Important To You?
- Contact Our Team, We Can Help!
- Understand Your Plan's Legal Documents
- Determine Eligibility
- Determine Available Benefits
- An Employee is Eligible, Now What? Complete IRS and Dept. of Labor Requirements
- Implement Your Process & Document Your Process
- How Leading Retirement Solutions helps you complete the IRS and Dept. of Labor Requirements
- Failure to Offer Enrollment – A Costly Mistake
- Q & A, Resources

## Why Is Offering the Plan Important To You?

Your Plan is governed by IRS and DOL Regulations.

IRS and DOL regulations require that you timely offer the Retirement Plan to employees when they become eligible.



You are the owner of the company sponsoring the Plan and/or a fiduciary to the Plan. You are responsible for operating the plan in accordance with regulations.

Failure to timely offer the Plan to eligible employees will result in a Plan violation requiring that your company pay significant penalties, taxes, and costly and time consuming filings with the IRS and DOL.



Offering the Plan to your employees can be made easy.

## Contact Our Team, We Can Help!



**Fact:** Approximately ½ of our clients have never managed a company sponsored Retirement Plan.

One of the most common calls our team receives comes shortly after a business owner has hired their first employee and the owner asks us, “I hired someone, what do I do now?”

### We Can Help:

- ✓ **Is An Employee Eligible:** Determine the date you and your employee(s) will be eligible to make contributions to the Plan, so you can mark it on your calendar.
- ✓ **How To Make Additional Investment Options Available:** Help you identify a selection of investment options to make available to yourself and your eligible employees.
- ✓ **Enrolling Employees:** Prepare a comprehensive enrollment kit for you to provide to employees.
- ✓ **Transferring Accounts into the Retirement Plan:** Assist you and your employees with transferring old IRA and 401(k) accounts to your company sponsored Retirement Plan.

# Step #1 - Understand your Plan's Legal Documents

## Adoption Agreement & Basic Plan Document

- Adoption Agreement controls
- Lots of legalese

### ADOPTION AGREEMENT #001 NON-STANDARDIZED 401(K)/PROFIT SHARING PLAN

The undersigned adopting employer hereby adopts this Plan and its related Trust. The Plan and Trust are intended to qualify as a tax-exempt profit-sharing plan and trust under Code sections 401(a) and 501(a), respectively, and the cash-or-deferred arrangement forming part of the Plan is intended to qualify under Code section 401(k). The Plan shall consist of this Adoption Agreement, its related Basic Plan Document and any related Appendix and Addendum to the Adoption Agreement. Unless otherwise indicated, all Section references are to Sections in the Basic Plan Document.

### COMPANY INFORMATION

1. Name of adopting employer (Plan Sponsor): Leading Retirement Solutions, LLC
2. Address: 2226 Eastlake Avenue East #88
3. City: Seattle 4. State: Washington 5. Zip: 98102
6. Phone number: 206 430-5084 7. Fax number: \_\_\_\_\_
8. Plan Sponsor EIN: 45-1200308
9. Plan Sponsor fiscal year end: December 31
- 10a. Plan Sponsor entity type:
  - i. ☐ C Corporation

## Plan Highlights, Summary Plan Description & Annual Notice

- Explains in layman's terms, how the Plan is to be offered to employees
  - Eligible Employees are entitled to a copy of the SPD & Notice

### LEADING RETIREMENT SOLUTIONS 401(K) PLAN PLAN HIGHLIGHTS

**Eligibility:** The following employees are excluded from the Plan:

- Employees covered by a collective bargaining agreement
- Leased employees
- Non-resident aliens
- Any person who is identified by the Employer as an independent contractor regardless of whether he is later reclassified as an employee by the Employer, any governmental agency or court

You must meet the following criteria to be eligible to make contributions to the Plan:

- You must attain age 21
- You must complete six (6) Months of service

You must meet the following criteria to be eligible to receive Matching Contributions under the Plan:

- You must attain age 21
- You must complete six (6) Months of service

### **Disclaimer:**

Much of the information presented herein is general information. Your Plan and the legal documents governing it's operation are unique to you and your organization.

### 2 step process

- Step 1: Eligibility: Eligible for certain benefits offered by the Plan
- Step 2: Entry: Eligible to enter the Plan for purposes of making employee (a.k.a. deferral) contributions from their paycheck, to the Plan

### Eligibility & Entry Requirements (Example Only)

If your Plan requires 1,000 hours, in the first 12 months of employment and age 21 (employee deferral contributions)  
Entry is semi-annual (Jan 1 & July 1)  
Plan Year End is 12/31

#### **Example #1**

Your Company hires Jane Sample on 1/1/2015  
Jane works 1,000 hours by 10/31/2015  
But Jane must be with the Company for 12 months, therefore,  
Jane can enter the Plan on 1/1/2016

#### **Example #2**

Your Company hires Joe Smith on 3/15/15  
Joe works 1000 hours by 1/15/2016  
But Joe must attain 12 months and meet semi-annual entry  
Joe is eligible for the Plan on 3/15/2016 and may enter the Plan on 7/1/2016

## Step #2 - Determine Eligibility

### Always Exceptions to the "Rule"

- ❑ **Anniversary Year switches to Plan year.**

#### **Example #3**

Your Company hires Joe Smith on 3/15/15  
Your Plan document calculates eligibility for the employees first year of employment based on Joe's anniversary, thereafter, his eligibility is based on the Plan's fiscal year (most often 1/1 – 12/31)

#### Joe's 1st Year Of Employment

Eligibility is based on the time period 3/15/15 to 3/14/16  
Joe works 1000 hours by 1/15/2016  
But Joe must attain 12 months and meet semi-annual entry  
Joe is eligible for the Plan on 3/15/2016 and may enter the Plan on 7/1/2016

#### Joe's 2nd Year of Employment

Eligibility is based on the time period 1/1/16 to 12/31/16  
\*notice the overlap re: the start date 3/14/16 (above)  
Joe works 1000 hours between 1/1/16 to 12/31/16 (also meeting the 12 month requirement)  
Joe is eligible for the Plan on 1/1/2017 and may enter the Plan on 1/1/2017

- ❑ **Excluded Classes.** 1099/independent contractor, non-resident aliens, union
- ❑ **Leased employees & Part Time employees**

## Step #3 - Determine What Benefits Employees May Be Eligible For



### 2 most common benefits your Plan likely makes available to eligible employees

- Employees can make deferrals/contributions from their own paycheck to the Plan
  - Review your Plan's legal documents, this benefit is usually available after fulfilling eligibility and entry requirements
- Rollover/transfer old outside accounts into the Plan
  - Review your Plan's legal documents, this benefit is usually available immediately upon hire

### Other benefits

- Company matching/safe harbor matching
- Company Profit Share contributions
  - Review your Plan's legal documents, this benefit most often requires a 1 year/1,000 hour wait and semi-annual entry

### Common Myth

- Even though an employee may not make deferral/contributions to the Plan, they may be eligible for other benefits offered by the Plan.
- I often hear "My employees aren't participating in the Plan so I don't need to do anything with the Plan."



## Step #4 - An Employee is Eligible, Now What?

- ☐ **Offer enrollment; Present employee with a comprehensive enrollment kit**
- ☐ **Require submission of an enrollment form by every eligible employee, regardless of whether they want to enroll or not**
- ☐ **IRS regulations require that you present employees with certain participant notices**
  - Summary Plan Description
  - Qualified Default Investment Alternative (QDIA) Notice
  - Safe Harbor Match Contribution Notice
  - Automatic Enrollment Notice
  - 404(a)(5) Service & Cost Disclosure
- ☐ **IRS regulations require that you present employees with certain information related to the available investment options**
  - Fund Fact Sheet or Prospectuses detail historical investment performance and costs associated with each investment.



**Once an employee has elected to enroll, you must timely implement such election – Make contributions on their behalf**

## Step #5 - Adding Investment Options To Your 401(k) Plan

Initially, the only available investment offered to Plan participants (including yourself) is privately held stock of your company. Most if not all of your employees will not want to invest in an asset that carries that kind of risk. Additionally, the IRS requires that you offer a diverse selection of investments to the Plan participants.

### Select An Option

#### **I want LRS to conduct an investment advisor search.**

- We regularly conduct investment advisor searches at the request of our clients.
- We offer this service free to our clients.

#### **I want to select the investments that will be available to myself and Plan participants.**

- In the alternative and to make it easy for your employees, you could simply offer the Vanguard Target Date Funds or you could offer something more robust.
- You would be responsible for monitoring the performance of these funds, over time.

#### **I have an advisor who will select the investments.**

- If you have a financial advisor/investment manager that you would like us to work with, we are more than happy to do so.
- We can work with that individual/firm who will select and monitor the investments to be offered to your participants via our platform.



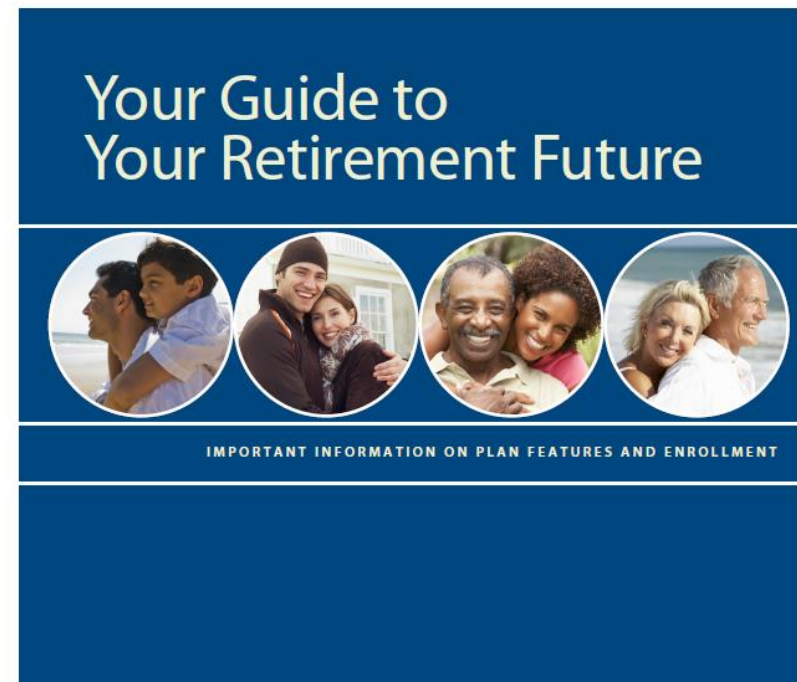
## Step #6 – Enrollment Kit

Once an Investment lineup has been determined, a custom Enrollment Kit will be created.

**Your Enrollment Kit will include each of the following:**

- Information about the Plan, its benefits, rights and features
- Required Participant Notices
- Education Information – Saving for Retirement, Compounding, etc.
- Fund Performance Summary
- Fund Prospectus/Fund Fact Sheets
- Enrollment Form
- Beneficiary Form
- Rollover Form – to roll old IRA and other Retirement accounts into the 401(k) Plan

The Enrollment Kit contains all the necessary documents to give to your employees at the time of eligibility.



Distributing all the required notices and offering the 401(k) Plan to your employees is made easier with our comprehensive enrollment kit.

## Step #7 – Payroll Contribution Process

The last major step to getting eligible employees into the Plan is to initiate the Payroll Contribution process. LRS will help guide and support you through this process during each step below:

### IRS 7 Day Rule



#### Payroll Contribution Process Meeting:

- ACH pull of contribution monies from your corporate bank account
- Allocation of the monies to participant accounts
- Investment of those monies

#### Late Payroll Contribution Reminders:

- LRS will send late payroll contribution reminders to help keep you in compliance with deferral deposits.

#### Payroll Contribution Maintenance:

- LRS will regularly compliance your payroll contribution files and reach out to you if there are any issues.

## Failure To Offer Enrollment-Top 10 Mistake

The IRS has cited the failure to offer enrollment as 1 of the top 10 mistakes they see for Plans under audit\*.

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
6) Eligible employees weren't given the opportunity to make an elective deferral election (exclusion of eligible employees). <a href="#">(More)</a>	Review the plan document sections on eligibility and participation. Check with plan administrators to find out when employees are entering the plan.	Make a qualified nonelective contribution for the employee that compensates for the missed deferral opportunity.	Monitor census information and apply participation requirements.

\*[http://www.irs.gov/pub/irs-tege/401k\\_mistakes.pdf](http://www.irs.gov/pub/irs-tege/401k_mistakes.pdf)

# IRS & Dept. of Labor Are All About “Process”, “Process”, “Process”

## Use the LRS Recommended Process for Enrollment

Use our Plan Administrator Guides (PAG)

PAG Topics include Eligibility, Compensation, Employee Notices, Keeping Your Plan In Compliance, Contribution Limits and more

Ask for our “Plan Administrator Checklist: Eligibility & Entry”

### PLAN ADMINISTRATOR CHECKLIST: ELIGIBILITY & ENTRY

#### Determine Eligibility

- ✓ Review your plan document concerning eligibility, participation and entry.
- ✓ Make a list of all employees who receive a W-2.
- ✓ Compare each employee's date of hire, birth, termination and number of hours worked against the eligibility and participation requirements of the plan document.

#### Determine Entry

- ✓ Determine the date that each employee is entitled to enter the plan and begin making and/or receiving contributions, according to the plan document.

- **Understand eligibility & entry requirements**
  - Know when your first employee will become eligible to participate in the Plan
  - Call us when you hire your first employee, we will help you identify the employee's eligibility date
  - Put the date on your calendar
  - Contact us 1-2 months prior to that date
- **Offer Enrollment, timely**
- **Document Timely Offering of Enrollment**
  - Department of Labor targets this in their audits, it is a common violation
  - Use our Plan Administrator Guides
- **Obtain an enrollment form even if the employee declines to enroll**
  - This is your proof that you timely offered enrollment
  - If we had a dollar for every employee we have heard claim they were never offered the opportunity to participate in the Plan

## Implement Your Process, Document Your Process

### RETIREMENT PLAN ENROLLMENT FORM

Company Name: \_\_\_\_\_ Retirement Plan Name: \_\_\_\_\_

Participant Name (First, MI, Last)

Social Security #

Birth Date \_\_\_\_\_ Hire Date \_\_\_\_\_ Termination Date \_\_\_\_\_  
**Marital Status:** ☐ Married ☐ Single **Gender:** ☐ Male ☐ Female

Participant Address (Number, Street & Apt./Ste. No) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Primary Phone

Alternate Phone

Work Email Address

Personal Email Address

#### REASON(S) FOR COMPLETING THIS FORM (select all that apply):

- ☐ I am a new participant in my company's retirement plan and want to start making contributions
- ☐ For Takeover Plans Only: I am a current participant in my company's retirement plan
- ☐ I wish to increase my current contribution amount and/or type
- ☐ I wish to decrease my current contribution amount and/or type
- ☐ I am updating my participant information
- ☐ Other: \_\_\_\_\_

#### CONTRIBUTIONS (select all that apply):

# Failure to Offer Enrollment-A Costly Mistake

**Corrective action and penalties for failing to offer or timely offer enrollment, are burdensome.**

- Generally, if you don't provide an employee the opportunity to make elective deferrals to a 401(k) Plan, you must make a qualified nonelective contribution to the Plan for the employee. (Translation: Your Company (and you) must pay the penalty).
- 50% of missed deferral opportunity. The corrective contribution must compensate for the missed deferral opportunity + restore lost earnings.
- The corrective contribution is a company contribution that's intended to replace the lost opportunity to a participant because of not being permitted to make elective deferrals.

## **EXAMPLE:**

**\$3,200 Corrective Contribution to 1 Employee.** A 1 year delay in offering the opportunity to enroll results in the employer having to make a \$3,200 corrective contribution to just one employee. Examples: (\$80k earner, 8% ADP=\$3,200), (\$35k earner, 4% ADP=\$700)

**LRS can help you correct. The IRS wants to see proactive correction of Plan violations via their Self Correction Program (SCP)**

- This example does not include missed company matching contributions or calculation of lost earnings
- If violation is caught under audit, can't use IRS Self Correction Program.



## Failure to Offer Enrollment-A Costly Mistake (cont.)

### EXAMPLE:

- The amount of the corrective contribution is equal to **50%** of the employee's missed deferral - determined by multiplying the actual deferral percentage for the employee's group (HCE or NHCE) in the Plan for the year of exclusion by the employee's compensation for that year.
- The corrective contribution must be **100% vested**.
- Employer D sponsors a 401(k) Plan with eight participants. The Plan uses a calendar Plan year. The Plan has a one-year-of-service-eligibility requirement and provides for January 1 and July 1 entry dates. Jack, to whom Employer D should've provided the opportunity to make elective deferrals on January 1, 2011, wasn't provided the opportunity until January 1, 2012. Jack was a NHCE with compensation for 2011 of \$80,000. The ADP for 2011 was 10% for HCEs and 8% for NHCEs. Employer D discovers this mistake during a Plan review in 2012.
- Employer D must make a corrective contribution for the 2011 missed deferral opportunity. Jack's missed deferral is equal to the 8% ADP for NHCEs multiplied by \$80,000 (compensation earned for the portion of the year in which D erroneously excluded Jack, January 1 through December 31, 2011). The missed deferral amount, based on this calculation is \$6,400 (\$80,000 x 8%). The missed deferral opportunity is \$3,200 (50% multiplied by the missed deferral of \$6,400). Accordingly, Employer D must make a corrective contribution of \$3,200 for Jack and adjust the corrective contribution for earnings through the date of correction.

### Additional Information

- This example does not include missed company matching contributions or lost earnings.
- If violation is caught under audit, can't use IRS SCP.

## **Open Q & A Session**

### **Resources**

Your online account with LRS at [www.LRSLink.com](http://www.LRSLink.com)

Your online account with LRS at [www.leadingRetirement.com/secure](http://www.leadingRetirement.com/secure)

IRS: [http://www.irs.gov/Retirement-Plans/401\(k\)-Resource-Guide](http://www.irs.gov/Retirement-Plans/401(k)-Resource-Guide)

[http://www.irs.gov/Retirement-Plans/401\(k\)-Resource-Guide](http://www.irs.gov/Retirement-Plans/401(k)-Resource-Guide)

Let us know what else you would like to hear about by emailing:

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