



A Law Firm in the People Business

Justin Deasy Joins Mazursky Constantine

Mazursky Constantine is pleased to announce the addition of Justin Deasy to the firm as an associate attorney.

Justin graduated from the University of Georgia Law School and has been an attorney with the DOL for the last 6 years, most recently as a senior investigator. This experience has given him unique insights into the operation and outlook of the DOL and on a wide range of ERISA issues.

Justin can be reached at 404-888-8843.

New Safe Harbor for Timing of 401(k) Contributions

The Department of Labor (the "DOL") has strict rules about when 401(k) contributions must be deposited into the plan's trust. The general rule is that these amounts must be deposited by the earliest date on which they can be segregated from the employer's general assets. In recent years, the DOL has been taking a very hard line on these rules. For example, if an employer has been able to make deposits within 5 days in the past, it will likely be held to that standard in the future.

New Safe Harbor for Small Plans. Last week, the DOL proposed an amendment to its regulations that would create a safe harbor for "small" plans (*i.e.*, plans with less than 100 participants). Under this new safe harbor, any 401(k) contributions that are deposited within 7 business days of when they were withheld will be treated as timely.

Relevance for Larger Plans. Although the new safe harbor only applies to plans with less than 100 participants, the DOL has indicated that it is also considering a safe harbor rule for larger plans.

More importantly, sponsors of both small and large plans should consider that the new guidance may become the DOL's starting point to audit the timing of contributions under all plans. For example, it may become important for any employer that is not able to satisfy the 7-business-day safe harbor to be able to demonstrate the inherent complexity of its payroll system that prohibits it from making earlier contributions (such as having numerous locations or multiple payrolls).

Other Types of Contributions. Though the new safe harbor is most relevant for elective deferrals under a 401(k) plan, it also applies to other amounts that are withheld from participants' pay. These include after-tax contributions, loan repayments and amounts withheld from participants' pay for health and welfare benefits that are funded through a VEBA.

If you have questions about the new safe harbor, or about the DOL's other requirements for depositing 401(k) contributions, please contact Justin Deasy at 404-888-8843 or Toby Walls at 404-888-8870.

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