NH HICKS

Legal and Pension Consultants

QUALIFIED PLANS IN TODAY'S ENVIRONMENT

Defined Contribution Plans

2020

NH HICKS

Legal and Pension Consultants
www.nhhicks.com

Who we are:

NH HICKS is a multi-generational company with one goal: To provide the best service, value and price in the retirement plan industry.

Each client is assigned an administrator and a consultant. Our administrators have over 250 years of combined experience. This provides administrative support by which we can ensure that all plan administration is performed in a timely manner, with a high degree of expertise. Our consultants assure a presence for one-on-one meetings to design and explain a plan that best fits a company's business and its retirement goals.

What we do:

NH HICKS specializes in quality pension plan administration with local service at a reasonable cost. We are a fee only third party pension administration and consulting firm that does not handle any investments or insurance. We offer flexibility through individually designed retirement plans and self-directed retirement accounts. Self-directed gives clients freedom to choose their own investments.

We currently administer over 1000 qualified retirement plans primarily throughout California, Oregon, Washington, Colorado, Utah and Idaho. Our goal is to provide excellent service to all clients by working closely with their tax and financial advisors.

Given the continuous stream of regulations, our firm and legal department are unsurpassed in experience and constantly updating and adapting to today's regulatory environment. Our annual plan review keeps our clients up-to-date with the best possible plan options along with keeping your plan in compliance with the latest IRS and DOL regulations.

www.nhhicks.com:

Our website is being updated daily with the newest regulations, common trends and articles from leaders in the financial industry. We have adapted to new technology, gone paperless, expanded our website and brought value through actively participating in numerous social media forums. You will also be able to find our complete staff biographies, email addresses, fees, forms, FAQs and other vital information.

Contact us at:

Tom Hicks	Debbie Rath	Samantha Rath	Matt Rath
(530) 521-7024	(530) 891-4975	(530) 891-4975	(530) 891-4975

PLAN DESIGN HIGHLIGHTS
FOR
DEFINED CONTRIBUTION PLANS

- Eligibility – 30% class exclusion
- Include Spouse
- New comparability plans – older owners
- 401(k) testing – safe harbors
- Uni(k) vs. SEP
- Defined Benefit 40-60-5 Rule
- Roth 401(k)
- Fee Disclosure and Offsets
- Changes due to COVID-19
- Suspending Safe Harbor Contributions
- New Plan Set Up Deadlines
- DC Restatements

OUTLINE
401(k) PROFIT SHARING PLAN
(For plan years beginning in 2020)

401(k) / Roth
100% up to $19,500
(age 50 - $6,500 catch-up)

MATCH
Limit combined with
Profit Sharing

PROFIT SHARING
0-25%
eligible compensation

ALLOCATION
Proportional
SS Integration
New Comparability

ADP TEST
Usually NHC avg. + 2% = HC max avg.

<u>NHC %</u>
5
10
0
<u>5</u>
5% avg. + 2% = 7% max HC avg.

<u>Prior yr. method on first plan yr.</u>
3% assump. + 2% = 5%

TRUST

- Deposits not taxed to employee
- Tax deferred growth
- Protected from creditors

ELIGIBILITY
Age 21
1 yr.
1,000 hrs. yr.
Union emp.
30% NHC job class

VESTING
Effec. DOH or plan start
401(k) – 100%
PS / Match - usually:
0 – 20 – 40 – 60 – 80 - 100%

TOP-HEAVY TEST
Keys own 60% of trust
May require 3% PS contrib.

INDIVIDUAL LIMIT
100% up to $57,000
($63,500 if age 50)

SAFE HARBOR
Auto. pass ADP and top-heavy test
100% vested / includes term. emp. / exist 90 days

1) 3% PS contrib.
2) Match roughly $1 for $1 up to 4% pay (6% max)
3) Auto Enroll with 3½% match (vesting)

COMPENSATION LIMIT
$285,000

TABLE OF VARIOUS LIMITS AND THRESHOLDS

	2020	2021
COMPENSATION LIMIT - *plan year beginning*	285,000	290,000
DC ANNUAL ADDITION LIMIT - *plan year ending*	57,000	58,000
401(k) DEFERRAL LIMIT - *calendar not plan year*	19,500	19,500
CATCH-UP DEFERRAL LIMIT - *calendar not plan year*	6,500	6,500
DB ANNUAL BENEFIT LIMIT	230,000	230,000
HIGHLY COMPENSATED EMPLOYEE *Employee is considered highly compensated if owner in current or prior plan year. Compensation definition only required to be met in prior plan year.*		
1) Over 5% owner		
2) Any employee (may limit to top 20%)	130,000	130,000
3) Spouse or linear relation		
KEY EMPLOYEE *Employee is considered key if meets definition in current plan year.*		
1) Over 5% owner		
2) Over 1% owner	150,000	150,000
3) Officer (count at least 1)	185,000	185,000
4) Spouse or linear relation		
TAXABLE WAGE BASE	137,700	142,800

RETIREMENT PLAN COMPARISONS

(For plan years beginning in 2020)

Assumptions		Profit Sharing Plans			
Employee Age	Salary	25% Salary Proportional	Age Weighted	New Comparability	401(k)
* 55	$50,000	$12,500	$31,098	$28,750	$26,000
50	50,000	12,500	20,681	6,000	26,000
* 45	50,000	12,500	13,754	28,750	19,500
40	50,000	12,500	9,147	6,000	19,500
35	50,000	12,500	6,083	6,000	19,500
30	50,000	12,500	4,046	6,000	19,500
25	50,000	12,500	2,691	6,000	19,500
	$350,000	$87,500	$87,500	$87,500	

* Assumes employees age 55 and 45 are owners.

The figures illustrated are dependent on many factors. Please consult with qualified advisors to determine applicable limits.

GENERAL OVERVIEW
401(k) PROFIT SHARING PLAN
(For plan years beginning in 2020)

A profit sharing 401(k) plan allows contributions through three different methods: employer profit sharing, matching and employee 401(k) salary deferrals.

Profit Sharing
Contrary to what the name may imply contributions to a profit sharing plan are not based on the profitability of the company. Contributions can be allocated based on the amount of each participant's compensation, job class, and/or age. The employer may vary the contributions year to year, ranging from 0 to 25% of eligible compensation, considering no more than $285,000 (2020 index) individually as compensation. The deadline for company contributions is the company's year-end tax return deadline including extensions.

For eligibility, the employer may be more lenient, but not stricter than excluding any employee: under age 21, less than 1 year of service (may be 2 years if 100% vested), under 1,000 hours per year and union employees. There may also be a class exclusion of 30% of the eligible non-highly compensated employees. Generally, the only class excluded is employees not employed on the last day of the plan year. Once an employee meets the eligibility requirements, they will typically enter the plan the first day of the plan year or seventh month (January 1 or July 1).

Employer contributions may come under a vesting schedule. Vesting is the employees' right to the employers' contribution. The most common schedule is 20% per year up to six years and goes 0-20-40-60-80-100%. Vesting may start at date of hire or for new plans, everyone may start at 0% vesting. The forfeitures under vesting may be reallocated to the remaining employees as a percent of compensation or used to reduce employer contributions.

401(k) / ADP Test
Employees may contribute 100% of compensation up to $19,500 (2020 index). All employee contributions will be 100% vested. There are no Federal or State income taxes on 401(k) contributions. The Actual Deferral Percentage (ADP) test must be passed where the average of the non-highly compensated employees is calculated, and the highly compensated employees may contribute a slightly higher average. Either the current or prior years' non-highly compensated average should be elected at plan set up. In 2020, highly compensated is defined as: over 5% owner, compensation over $130,000 in 2019 (may limit to top 20%), or a spouse or linear relation.

Individuals age 50 or older may contribute an additional catch-up contribution of $6,500 in 2020. This will not be subject to any tests (ADP) or limits.

Employers may amend their plan to allow for Roth 401(k) contributions. These contributions are after-tax and therefore not taxed at retirement. Employees are not limited by the IRA compensation limits. Roth and regular 401(k) contributions are combined for testing and limited to $19,500 ($26,000 if age 50). Separate accounting is required for the Roth 401(k).

Employers may require an Automatic Enrollment provision with a 30 day employee notice. This usually deducts about 3-10% of compensation unless employees opt out within 90 days after the first salary deferral.

Match
The employer may offer a match, to increase participation, which can come under a vesting schedule. For example, 25¢ on the $1 up to 4% of pay. The match may be discretionary, as long as the employer allows the employees to change their 401(k) election if the match is changed.

Top-Heavy Test
If your plan is top-heavy (the total of the accounts of all key employees exceeds 60% of the total of the accounts of all employees) you are required to make a minimum contribution to non-key employees equal to the lesser of 3% of compensation or the highest contribution percentage rate for a key employee. You may also contribute the same percent for the key employees. This contribution will come under the vesting schedule. If the plan is top-heavy a contribution can be avoided if none of the key employees use the 401(k) in that year.

For 2020, key employee is defined as: over 5% owner, a >1% owner with compensation at or above $150,000, an officer with compensation at or above $185,000, or a spouse or linear relation.

Safe Harbor Options
An employer may choose to make a 100% vested contribution (except autoenroll) to the employees to pass the ADP and top-heavy tests. This must include eligible employees who terminate before the end of the year. New plans must be in place for at least 90 days. These options are:

1) 3% contribution to all eligible non-highly compensated employees (may also include highly compensated). 3% may do "double duty" counting as a basis for new comparability plans based on job class. Final notice due 30 days prior to plan year-end.
2) Match non-highly compensated employees $1 for $1 up to 3%, plus 50¢ on the $1.00 from 3% to 5% (may increase match to $1 for $1 up to 6% of pay and include highly compensated). Final notice due 30 days prior to plan year beginning.
3) Automatic Enrollment provision at 6% of compensation over 4 years and a $1 for $1 match up to 3 ½% with vesting after 2 years. Final notice due 30 days prior to plan year beginning.

Limits
No more than $285,000 (2020 index) may be considered as a basis of compensation. The most an individual may receive from the three sources (profit sharing, match and 401(k)) is 100% of compensation up to $57,000 ($63,500 if age 50).

The plan is still a profit sharing plan that has matching and 401(k) provisions within. Therefore, the employer match and profit sharing (401(k) excluded) plan contributions are limited to 25% of eligible compensation. Since this is an average of all employer contributions (401(k) excluded) some individuals may receive 100% while the total employer contribution is still under the 25% limit.

Investments
The plans are self-trusteed so the employer can choose any legal non-foreign investment. Typically, the employer will control the profit sharing contribution as it comes under the vesting schedule, and therefore may not yet be owned by the employee.

The employees usually control their own 401(k) contribution. Each employee can have their own segregated account where they can obtain their balance at any time as well as trade the account within a menu of funds. Employees should be given the choice of at least four investments, ranging from conservative to aggressive.

If you have any questions or would like to meet with a plan consultant, please call NH HICKS.

Key Takeaways from the CARES Act

The coronavirus (COVID-19) emergency has placed the United States in a challenging and unique position that many of us have never experienced before. Many employers are facing closures of offices and businesses resulting in layoffs or furloughs, or work from home situations. In response, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020.

Below is a description of the key CARES Act provisions:

Coronavirus-Related Distributions
Plans may permit in-service coronavirus-related distributions from a participant's vested account balance without regard to the normal withdrawal restrictions. This relief is offered through December 31, 2020.

These distributions are subject to the following requirements:

- Limited to $100,000 per tax year, aggregated across all plans of the employer or controlled group.
- Not subject to 20% mandatory tax withholding upon distribution.
- Exempt from 10% early withdrawal penalty generally applicable to distributions made to participants who are 59-1/2 or younger.
- Eligible to be indirectly rolled into an IRA or employer plan within 3 years from the date the distribution is taken.
- Amounts not indirectly rolled into an IRA or employer plan are included in gross taxable income, pro rata, over 3 tax years, unless the participant elects to include all amounts in a single tax year.

Coronavirus-related distributions are available to "eligible" participants who:

- Are diagnosed with a coronavirus (COVID-19 or SARS-CoV-2) illness.
- Have a spouse or dependent diagnosed with a coronavirus illness.
- Experience "adverse financial consequences" as a result of a quarantine, furlough, lay-off, reduction in work hours, business closure, the lack of childcare, or other factors determined by the IRS due to the coronavirus emergency.

A plan administrator may rely on a participant's certification of the above.

Coronavirus-Related Loan Relief
Two types of loan relief were also provided:

1. Plans may allow eligible participants, as defined above, to take loans up to the lesser of $100,000 or 100% of the participant's vested account balance for the specified period.
2. Upon the request of an eligible participant, plan sponsors must suspend loan repayments due on outstanding loans that are in good order for a period of up to 12 months. This relief expires on December 31, 2020. The suspension period is to be added to the original loan term when repayments, including accrued interest, resume, regardless of the length of the loan's original term.

The calculation method of the maximum loan available remains the same including the offset of prior loans within the last year.

Waiver of 2020 Required Minimum Distributions (RMDs)
A Distribution from an "Eligible Retirement Plan," (an IRA, 401(a) plan (including 401(k), 403(b), and governmental 457(b)) will not be required to make any RMD payments for 2020. Specifically:

- Participants who turned age 70½ prior to 2019 will not be required to receive an ongoing RMD for 2020.
- Participants who turned age 70½ in 2019 and who did not receive their first RMD for 2019 on or before January 1, 2020 will not have to receive their first (2019) RMD or their 2020 RMD.
- Beneficiaries receiving life expectancy payments will not be required to receive their 2020 beneficiary RMD.
- Beneficiaries who have an account balance in the plan subject to the five-year distribution rule may extend their required distribution by one year (full distribution of the account must be made by the 6th anniversary of the participant's death).

If a 2020 RMD is provided to any of the above, it may be rolled over to an IRA or employer plan. A participant's RMD or beneficiary's life expectancy RMD for 2021 will need to be paid.

Defined Benefit Plan Relief
Delay in 2020 funding obligations. Under the CARES Act, all single-employer funding obligations due during 2020 are not required to be made until January 1, 2021, with interest for late payments.

Benefit restrictions. Under the CARES Act, a plan sponsor may elect to apply the plan's funded status for the 2019 plan year in determining the application of benefit restrictions for plan years which include calendar year 2020.

Timing of Plan Amendments
The CARES Act includes a remedial amendment period giving plan sponsors additional time to amend their plans for this relief. Sponsors of non-governmental plans have until the last day of the plan year beginning in 2022 to amend their plans, i.e., December 31, 2022 for a calendar year plan. Sponsors of governmental plans have until the last day of the plan year beginning in 2024 to amend their plans.

Administrative Items on which regulatory guidance is needed
Relief from the spousal consent requirements. To date, neither the IRS nor the DOL have provided any guidance that might relieve plans from their notarized spousal consent requirements; however, the industry has provided commentary to the regulatory agencies that relief in this regard is needed.

Unforeseeable Emergency. Another area in which we are awaiting guidance from the IRS is whether a coronavirus- related financial need may be included as part of a nonqualified plan's unforeseeable emergency distributions. Based on current guidance, a coronavirus-related distribution would not be included within this withdrawal right.

We will provide further updates as they become available. If you have any questions, please contact us at 530-891-4975 or email Tom Hicks (TomHicks@nhhicks.com), Debbie Rath (drath@nhhicks.com) or your administrator found at NHHICKS.com.

SUSPENDING SAFE HARBOR CONTRIBUTIONS MID-PLAN YEAR

Given the current uncertainty in the world economy due to the coronavirus pandemic, employers who sponsor 401(k) plans want to know if they can stop their safe harbor contributions mid-year. The simple answer is yes, but there are amendments and notice requirements along with the implications of removing the safe harbor contribution.

Removing the Safe Harbor Contribution

First, the plan document must be amended to remove the safe harbor provision, whether the plan uses the safe harbor 3% non-elective or matching contribution. In addition, all employees who are eligible for the plan must be given a notice 30 days ahead of the change and the opportunity to change their deferral elections at that time. We can assist you by preparing the amendment and required notice.

Implications

If you are considering removing the safe harbor provisions, there are a few very important stipulations we must pass on.

<u>Funding Year-to-Date Contributions</u>

Under current law, the plan sponsor is still required to fund the safe harbor for the period from the start of the year through the date the safe harbor removal becomes effective, e.g. 30 days after participant notice is given. For example, if you provide a notice on April 1, 2020 indicating the safe harbor will cease on May 1, 2020, the safe harbor contribution will be calculated on eligible compensation and deferrals from January 1 through April 30, 2020.

However, you will be able to minimize the immediate impact of this requirement by postponing the actual deposit. In order to take a tax deduction for the contribution, you must make the deposit by the due date (with extensions) of the company tax return for the year. If your company is on a calendar tax year and you extend the 2020 return, that could be as late as September or October of 2021. If you are not concerned about the tax deduction, then you have until December 31, 2021 to deposit the 2020 safe harbor contribution. There is one additional note of caution with regards to deposit timing. Check the plan document for the timing of the deposits as an amendment may be necessary.

<u>Loss of Top-Heavy Exemption</u>

If the plan is currently top-heavy, stopping the safe harbor contributions means the plan loses its exemption from the top-heavy rules. Therefore, all eligible participants who are employed as of the last day of the plan year must receive an employer contribution equal to the lessor of 3% of compensation or the highest percentage received by key employee (basically an owner or officer). If no key-employees have made 401(k) contributions or received an employer contribution during the year, the minimum top-heavy contribution is zero. However, if key employees have been contributing during the year, this could result in a required contribution equal to 3% of wages for all eligible participants. It is important to review the plan's top-heavy status and the year-to-date contributions when making this decision.

<u>ADP/ACP Testing</u>

With the removal of safe harbor contribution, the plan will also become subject to ADP/ACP Non-Discrimination Test. This test limits the amount that highly compensated employees (HCEs) can defer based on the average deferral rate for non-HCEs. In the event the plan fails the ADP/ACP tests, you may have to make corrective distributions.

This information is based on the rules currently in place, but it is possible that relief may be issued in the upcoming weeks. When other options become available, we will pass along that information as soon as possible. We want to make sure you are well-informed of the options and requirements.

NH Hicks is always available to help with your specific plan and situation.

New Plan Set Up Deadlines

The **Setting Every Community Up for Retirement Enhancement (SECURE) Act** was passed in December 2019 and made policy changes that will impact the adoption of new defined contribution plans and defined benefit plans. Here are the new plan deadlines for 2020 and beyond.

Start-Up Safe Harbor Plan: October 1st

This deadline has not changed. If an employer does not currently sponsor a retirement plan and is interested in starting a safe harbor 401(k) plan, the deadline is 90 days before year end. That means October 1, 2020 to install a new safe harbor plan for this year.

Adding Safe Harbor Provisions for 2020: Dates vary

If the client already sponsors a 401(k) plan and is looking to add a safe harbor provision, there are now different deadlines depending on the safe harbor provisions.

- Safe Harbor Match: The deadline to add a safe harbor match remains unchanged at 30 days before the start of the plan year. An employer has until December 1, 2020 to add a safe harbor match for 2021.

- 3% Non-Elective Safe Harbor: A plan sponsor has until 30 days before the end of the plan year to add a 3% non-elective safe harbor provision. That is December 1, 2020 for calendar year plans.

- 4% Non-Elective Safe Harbor: If the plan sponsor misses the 3% safe harbor deadline above, there is a new option available. They can now add a safe harbor non-elective provision up to the last day of the following plan year if the plan sponsor is willing to contribute 4% of pay instead of the 3%. So, they have until December 31, 2021 to add a 4% non-elective safe harbor provision to their plan for 2020.

Profit Sharing or Defined Benefit Plans: Due date of business tax return plus extensions

An employer can now set up a plan, and make deductible contributions, until the due date of the employer's 2020 tax return plus extensions. It is important to note that this only applies to employer contributions, as it is not possible to make 401(k) deferrals retroactively to the previous year. This extra time provides a great opportunity for companies to achieve some additional tax savings right at the time they realize it the most …. as they are looking at a large tax payment due to the IRS.

We think the SECURE Act offers qualified plan opportunities and a little reprieve from the effects of potential procrastination. NH Hicks is always here to help our advisors and clients.

Information Regarding
Cycle 3 Restatement Process
Defined Contribution Plans

Approximately every 6 years, the IRS requires most employer sponsored retirement plans to update their plan document through a process called "restating". For 401(k) and other defined contributions plans, this new restatement is referred to as "Cycle 3". The timeframe for restating the plan documents is set to begin in the fall of 2020 and must be adopted by July 31, 2022.

What is a plan restatement?
A restatement is a complete rewriting of the plan documents. It incorporates changes from any mandatory or voluntary amendments that have been adopted since the last restatement, which was called PPA.

Is the "Cycle 3" plan restatement mandatory or voluntary?
The upcoming plan restatement is mandatory. Plans that do not adopt a restated document by July 31, 2022 will be subject to IRS-imposed penalties, which in some circumstances could include revoking the plan's tax-favored status.

Why do we have to restate our plan document?
Plan documents are draft based on laws and regulations set forth by Congress, the IRS, and the Department of Labor. As those laws and regulations change, documents must be updated to reflect those changes. Since the last restatement, there have been several changes impacting retirement plans including the following:

- Expansion of the definition of "spouse" to include those of the same gender,
- Availability of plan forfeitures to offset certain additional types of company contributions,
- Ability to amend safe harbor 401(k) plans once the year has already started, and
- Creation of in-plan Roth transfers.

How will NH Hicks help with your plan restatement?
The plan document forms the foundation of the plan and its complaint operation. This restatement should be more than simply transcribing the current provisions and adding the newly required language. We think this is a great opportunity to work with our clients to review the actual operation, company objectives, annual test results, etc. to see whether any changes can make the plan operate more efficiently and/or increase the plan's value to the owner and their participants.

What does NH Hicks include with its plan restatements?
The plan document restatement package generally will include the following based on each plan's provisions:

- Adoption agreement reflecting the specific provisions selected for the plan,
- Basic plan document which includes the detailed legal language describing each provision,
- Summary Plan Description booklet for distribution to plan participants,
- Signature pages PDF file that includes all pages requiring signatures, and
- Administrative policies and forms.

Conclusion
We will spend time with you to assure your new restated document reflects current company goals and takes advantage of any new options. As we get closer to the plan document release date, we will follow-up with additional information on the process.

NH HICKS

FEES FOR SERVICES

401(k) Profit Sharing Plans:
Installation/Documents (takeover no charge) $1250
Administration .... $1350 + $30 per eligible participant

Defined Benefit Plans:
Installation/Documents (takeover no charge) $1350
Administration including actuarial certification .... $2200 + $50 per eligible participant

DB/DC Combination Plans:
Installation/Documents (takeover no charge) $2700
Administration including actuarial certification .... $3650 + $50 per eligible participant

*Additional Fees will be added for the installation and administration of Cash Balance Plans

Owner Only –401(k):
Installation/Documents (takeover no charge) $550
Administration (assets less than $250,000) $300
Administration (assets $250,000 and more) $550

Owner Only – Defined Benefit Plan:
Installation/Documents (takeover no charge) $1300
Administration including actuarial certification $1700

Owner Only – DB/DC Combination Plans:
Installation/Documents (takeover no charge) $1700
Administration including actuarial certification $2100

Special Transactions:

Defined Contribution Plans
Comparability allocation (multiple runs) $250
Amendments, trust accounting or 5500 audit consulting .... $125 per hour
Distributions or extensions (annual loan $35) .... $ 95
QDRO or RMD $225
Cycle 3 Restatements (Owner only $450) $1,050

Defined Benefit Plans
PBGC Reporting $225
Trust accounting or 5500 audit consulting .... $125 per hour
Distributions or amendments $225
Loans (annual loan $35) or Extensions .... $ 95

Our fees are offset by all third party payments we receive from investment companies.

11-1-2020