Retirement Daily

Saving/Investing for Retirement

Ask Bob: Changes to Employer's 401(K) Match

By Robert Powell | Mar 21, 2019 9:34 AM EDT

You're Invited: Will You Have Enough Money to Retire?

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Question: My company recently changed how it matches an employee's 401(k) contribution. We, as employees in this company, get a fringe benefit. When I first started working for this company 13 years ago, the employee kept all of said fringe benefits. It was a cash value - a certain amount of dollars an hour separate from normal pay. Within the past two to three years some things have changed when it comes to that fringe benefit. Just last year it was brought to our attention that the company was going to take out the 401(k) match from the fringe benefit but only if there were fringe benefit monies left over after medical, dental, vision, etc.

If an employee's health and welfare benefits surpassed the amount of the fringe benefits monies, the company would then and only then pay (out of pocket) for its share of the 401(k) match.

Fast forward to this year and I noticed that my first check was $80-90 less than last year with no changes to my tax structure nor benefits. I brought this up to HR who stated that the company now takes out their share of the 401(k) match from the fringe benefit before any health and welfare benefits are paid, whereas before, the 401(k) match was taken out last. It seems as if we took a 3% (their max 401(k) match) pay cut. Seems a little shady. Thoughts?

Answer: So, you seem to be referring to a fringe benefit that is a taxable fringe benefit and is other than overtime. What's more, the employer is apparently reducing an employee's fringe benefits by 3% in order to fund its maximum 3% matching contribution.

"While it is certainly understandable that employees are upset by this reduction in their compensation, ERISA does not require an employer to establish a 401(k) plan and, if an employer chooses to establish a 401(k) plan with matching contributions, ERISA does not preclude an employer from determining the source of the funds for those matching contributions," says Marcia Wagner, the founder of The Wagner Law Group. "That is a business/settlor decision, that is not subject to ERISA's fiduciary requirements."

The fact that the maximum matching contribution is 3% indicates that the plan is not a safe harbor 401(k) plan, but even if the plan were a safe harbor 401(k) plan, the notice requirements for a safe harbor plan would not require notice that the participant's compensation in the upcoming plan year would be reduced, says Wagner.

"The elimination or substantial reduction of the fringe benefit should not violate state law, and without knowing the jurisdiction, we cannot advise if the failure to notify the employees of the elimination or reduction of the fringe benefit violates state law," say Wagner.

Another adviser agreed with Wagner's assessment. "From what you've shared, it sounds like you have a generous employer who provides benefits above and beyond what many employers would consider providing," says Kaleb Paddock, a certified financial planner with Ten Talents Financial Planning.

"With employer qualified retirement plans specifically, the employer reserves the right to structure benefits in many 'creative' ways," he says. "Your employer likely spoke to a benefits consultant who helped them design the benefits at a lower cost to the employer overall and/or perhaps may have helped your employer correct errors in how they historically administered their fringe benefits package. Perhaps inadvertently, the net effect is this lowering of your take-home pay."

Paddock's advice: Review the 401(k) Plan's Summary Plan Description (SPD) which will provide a straightforward explanation of the new match formula.

What's more, Paddock says you should have your financial planner or accountant review the SPD with you. "While the reduction in take home pay is not pleasant, it may still be a good deal overall since 401(k) matching contributions are, in a sense, free money to you and help build your retirement nest egg in a tax-favored manner," he says.

Got questions about the new tax law, Social Security, Medicare, retirement, investments, or money in general? Want to be considered for a Money Makeover?
Email Robert.Powell@TheStreet.com. Kim McSheridan assisted with this report.