

PERSI CHOICE 401(K) PLAN
Employer Contributions – Guidelines
2009

Plan Document Provisions

Article III, Section 3.2 Employer Contributions:

When authorized by the Board, a participant's employer may make Employer Contributions to the plan on behalf of the participant as follows:

- (a) An Employer may match Employee Pre-Tax contributions (which are also referred to as Elective Deferrals) on an ongoing basis subject to limitations and restrictions as set forth in writing by the Employer and provided to the Board.*
- (b) An Employer may make one-time or irregular contributions to a participant's account by paying to the board the contribution and providing instructions on how contributions should be allocated among participants*
- (c) All Employer Contributions shall be fully vested when made.*
- (d) When options become available, Employer Contributions shall be invested among the various Investment Options in accordance with the Employee's outstanding Investment Option election as in effect under Section 2.4*
- (e) Employer contributions shall be remitted to the Board by the fifth working day after each payroll where a contribution is reported.*

Employer Contributions

There are two types of Employer Contributions; matching contributions and one-time or irregular contributions.

An employer may make matching contributions into employees' Choice 401(k) Plan accounts. The amount of a matching contribution is determined by a formula selected by the employer and depends on the amount of an employee's Elective Deferrals to the Choice 401(k) Plan. The employer must provide a written description to the Choice 401(k) Plan Manager at PERSI of the formula for allocating to employer matching contributions.

An employer may also make one-time or irregular contributions into employees' Choice 401(k) Plan accounts. The amount is determined, by the employer, annually or irregularly. The employer must provide a written description to the Choice 401(k) Plan Manager at PERSI of the manner in which the one-time or irregular contribution is to be allocated.

If the employee has a choice (other than a one-time irrevocable election) whether to receive cash or an employer contribution, the contribution is not an Employer

Contribution. Instead, the contribution is an Elective Deferral and must be treated as such. See, "Treatment of Contributions that are Elective Deferrals" below.

If an employee makes a "one-time irrevocable election" on or before the date the employee first becomes eligible to participate in the Choice Plan to have the employer contribute a specified amount or a specified percentage of the employees compensation to the plan, the contributions made pursuant to this election are considered Employer Contributions and not Elective Deferrals.

Treatment of Employer Contributions

The following rules apply to Employer Contributions:

- The employer does not withhold or pay FICA on Employer Contributions.
- The employer does not include the Employer Contributions as wages in Box 1 of the annual W-2 reporting form.
- No PERSI contributions are owed on Employer Contributions.
- Employer Contributions are not included in the member's salary for benefit calculation purposes under the PERSI Base Plan.
- Employer Contributions are not counted against the Elective Deferral Limit of IRC Section 402(g) (discussed below).
- Employer Contributions are counted against the Maximum Contribution Limit of IRC Section 415(c) (discussed below).

Treatment of Elective Deferrals

If a contribution is not a *bona fide* Employer Contribution, because the employee has a choice (other than a one-time irrevocable election) whether to receive the amount in cash or to receive a contribution, the amount contributed is considered an Elective Deferral. The Choice Plan cannot accept the contribution unless the employee provides the employer with a completed deferral election form.

If we accept the contribution:

- The employer must withhold and pay FICA on the contribution.
- The employer does not include the contributions as wages in Box 1 the annual W-2 reporting form.
- The employer includes the contributions in Box 12 of Form W-2.
- PERSI contributions are owed on the contribution.

- The contribution is included in the member's salary for benefit calculation purposes for the PERSI Base Plan.
- The contribution is counted against the Elective Deferral Contribution Limit of IRC Section 402(g) (discussed below)
- The contribution is also counted against the Maximum Contribution Limit of IRC Section 415(c) (discussed below)

Maximum Contribution Limit – IRC Section 415(c)

Employer matching and one-time or irregular contributions are counted against the IRC Section 415(c) limit. Effective January 1, 2009, the IRC Section 415(c) maximum individual limit applicable to the Choice 401(k) Plan is the lesser of 100% of the employee's compensation or \$49,000. This limit includes Employee Elective Deferral Contributions (other than "catch-up contributions" made by an employee age 50 or older – see the next paragraph), Employer Contributions, and any gain sharing contributions under IRC Section 414(k) made to the PERSI Base Plan.

Elective Deferral Limit – IRC Section 402(g)

Employer Contributions that meet the criteria for either a true matching contribution or an appropriate one-time or irregular contribution are not counted against the Elective Deferral limit that an employee may contribute into the Choice 401(k) Plan. If the employee has a choice or any control over whether he or she receives cash instead of the contribution, the contribution is counted against the annual Elective Deferral limit provided in IRC Section 402(g). In 2009, the Elective Deferral limit is \$16,500; the catch-up contribution limit for participants age 50 or older during 2009 is \$5,500.

Employer Certification

Employers must certify with respect to each contribution (other than Employee Elective Deferral contributions), that no employee had a choice whether to receive cash or a contribution to the Choice 401(k) Plan. Employers must also identify any contribution that was made pursuant to a one-time irrevocable election.

How to Obtain Approval

The employer must provide the Choice 401(k) Plan Manager at PERSI a description of the manner in which Employer Contributions are allocated to employees' accounts. The manager then reviews the information to see if it qualifies under either of the two Employer Contribution provisions allowed by the plan. Any questionable contributions will be submitted to PERSI legal counsel for review. Call PERSI at 1-800-451-8228, ext. 256 (334-3365, ext. 256 in the Treasure Valley area) for more information.