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“Tip of the Month”

Your Company’s Pension Plan Contributions

If your company has a 401(k) plan for its employees, or other pension or profit sharing plan, here’s a tip: be sure to deposit your employees’ payroll deductions into the plan. Do not fall into the hidden trap of leaving the 401(k) payroll withholdings in your operating account to use for other more pressing expenses, such as payroll and supplies. If the money is not timely deposited, you could face criminal charges.

In May of 1997, the U.S. Attorney General and the Secretary of Labor announced a nationwide pension-fraud enforcement crackdown. The enforcement initiative is intended to bolster the confidence of pension-plan participants. Since that announcement, dozens of pension prosecutions have been started. In these criminal cases, the pension funds were not diverted to the personal benefit of the business owners, but were simply used for general business operating purposes.

The prosecution target is usually the business sponsoring the qualified plan or an officer of the business who is a “fiduciary” under the Employee Retirement Income Security Act of 1974 (ERISA). A fiduciary is anyone who has discretionary control over the plan assets. Employee contributions become plan assets on payday. The business cannot use the contributions deducted from employee paychecks for any other purpose.

It used to be that a business had up to 90 days to deposit amounts deducted from employee paychecks into the trust for the pension, profit-sharing or 401(k) plan. Now, ERISA regulations require those amounts to be deposited by the 15th day of the month following the month in which they are deducted. That is the maximum limit. Technically, the amounts must be deposited at the earliest possible date.

Federal penalties can include up to five years in prison or up to \$250,000 in fines. In addition, the Department of Labor can go after the business and the owners personally to collect delinquent contributions. On top of that, the Labor Department can impose a civil penalty on the business owner equal to 20 percent of the amount recovered for breaching his fiduciary duties to the plan’s participants. You don’t want any of that.

If you have any questions about these pension plan regulations, please do not hesitate to call.

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