

Timely Deposit of Deferrals

Employers who offer a deferred compensation plan have a fiduciary duty to make sure that the plan is operated in the best interests of their employees. This includes checking to make sure the plan has reasonable fees, offers reasonable investment alternatives, and follows the IRS rules for deferred compensation plans. By using the Ohio Deferred Compensation Program, employers are partnering with a plan administrator that will help with many of these fiduciary responsibilities.



One important fiduciary duty that remains with the employer is to deposit payroll deferrals in a timely manner. The IRS does not have deposit rules for governmental 457 plans, but has issued guidance for similar 401(k) plans. Those employers are responsible for depositing salary deferrals on the earliest date that the deferrals can reasonably be segregated from the employer's general assets. The 401(k) rules state:

- If your plan has fewer than 100 participants, your deposit is considered timely if it's made within 7 business days after you withhold the salary deferrals, even if you were able to deposit them earlier. If you don't deposit the salary deferrals within 7 business days after you receive or withhold them, then your individual facts and circumstances will determine whether your deposit was considered timely. For larger plans (100 participants or more), the determination of whether the deposit was timely is based on the individual employer's facts and circumstances.
- Regardless of your individual facts and circumstances, you must deposit the salary deferrals no later than 15 business days in the month following the month in which the amounts would otherwise have been payable to your employees in cash. If your facts and circumstances show that you could have made the deposit on an earlier date, then you must have deposited your salary deferrals by that earlier date for them to be considered timely.

Because employees do not begin earning on their investments until their payroll deferrals are deposited, employers are encouraged to remit payments as soon as possible.