

2023 ERISA Plan Compliance Calendar

A schedule to help plan sponsors track important due dates for their plan

Being a retirement plan sponsor involves juggling many tasks, one of the more important being to make sure your plan complies with all pertinent federal and local regulations. A compliance calendar keeps track of your company's required filings, their due dates and related details so you can avoid incurring any fines or other penalties for late filings or missing information.

What follows is intended to alert PLANSPONSOR readers to some of the significant regulatory dates for 2023—it does not identify all compliance obligations or due dates. Additionally, the calendar assumes that a plan is being administered on a calendar year basis by an employer using a calendar fiscal year.

For the most part, the information for pension plans applies to single employer plans.

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| January | 17 | Deadline for final minimum funding quarterly installment payment for defined benefit plans that had a funding shortfall in 2021 —i.e., due 15 days after the last plan-year quarter-end. (Due January 15, which falls on a weekend in 2023. The IRS provides that dates that fall on a Saturday, Sunday or holiday are delayed until the next business day.) |
| | 30 | Deadline to provide participants and beneficiaries of a defined benefit plan (DB) with the notice of benefit restrictions if the DB plan is less than 60% funded. Note: Due January 30, or 30 days after the measurement date at which the plan has become subject to a benefit restriction. |
| | 31 | Many recordkeepers require participant data for average deferral percentage (ADP)/average contribution percentage (ACP), top-heavy and 402(g) compliance testing to be returned by this date.

Deadline for sending Form 1099-R to participants who received distributions from a qualified retirement plan during the previous year. |
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| February | 14 | Deadline for participant-directed defined contribution (DC) plans to provide participants with the quarterly benefit/disclosure statement and statement of plan fees and expenses actually charged to individual plan accounts during last quarter of 2022. Note: Due 45 days after the end of the quarter. |
| | 28 | Deadline for filing Form 1099-R with the IRS if not filed electronically, to report distributions made in the previous year. |

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- March**
- 15** Employer contributions due to the retirement plan's trust for S-corporations and partnerships with December 31 fiscal year-end in order to take deductions with no corporate tax extension.
- Forms 1042 and 1042-S due to the IRS to report, respectively, income tax withheld from distributions made to nonresident aliens and retirement plan distributions made to nonresident aliens.
- Deadline for distributing ADP/ACP refunds without incurring a 10% excise tax on the employer—i.e., due 2 1/2 months following the plan year-end. Note: A special deadline applies to plans satisfying the requirements of an eligible automatic contribution arrangement (EACA). (See June.)
- Deadline to apply to the IRS for a waiver of the minimum funding standard for DB and money purchase pension plans—i.e., no later than the 15th day of the third month after the close of the plan year for which the waiver is requested.
- 31** Electronic filings of Form 1099-R for 2022 distributions are due to the IRS.
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- April**
- 1** Initial required minimum distribution (RMD) is due to participants who turned 72 or terminated employment (whichever is later) in 2022. (Note: April 1 falls on a weekend in 2023. There is an open question as to whether the IRS rules for extending deadlines that fall on a non-business day apply to required minimum distribution deadlines.)
- 15** Deadline for corrective distributions of excess deferral amounts under Internal Revenue Code Section 402(g) to participants. (Note: April 15 falls on a weekend in 2023. There is an open question as to whether the IRS rules for extending deadlines that fall on a non-business day apply to corrective distribution deadlines.)
- 17** Deadline for first 2023 minimum funding quarterly installment payment for DB plans that had a funding shortfall in 2022 —i.e., due 15 days after the last plan-year quarter-end. (Note: April 15 falls on a weekend in 2023 so the deadline is extended to the next business day.)
- Employer contributions due to the plan's trust for C-corporations with December 31 fiscal year-end in order to take deductions with no corporate tax extension. (Note: April 15 falls on a weekend in 2023 so the deadline is extended to the next business day.)

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- May**
- 1** Deadline for sponsors of single and multiemployer DB pension plans to send their annual funding notice to participants, beneficiaries and labor organizations representing participants. Small plans—i.e., those covering fewer than 100 participants—must provide the notice by the IRS filing due date of the plan’s form 5500; the notice takes the place of the summary annual report for a DB plan. (Usually due April 30, which falls on a weekend in 2023. The DOL provides that filing dates that fall on a Saturday, Sunday or holiday are delayed until the next business day.)
- Final 2022 comprehensive PBGC premium due to the PBGC for plans that filed an earlier estimated variable rate premium in the October 17, 2022, comprehensive filing. (Usually due April 30, which falls on a weekend in 2023. The PBGC provides that filing dates that fall on a Saturday, Sunday or holiday are delayed until the next business day.)
- 15** Deadline for participant-directed DC plans to supply participants with the quarterly benefit/disclosure statement and statement of plan fees and expenses actually charged to individual plan accounts during first quarter of this year. Note: Due 45 days after the end of the quarter.
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- June**
- 29** Deadline for retirement plans with publicly traded employer securities to file their Form 11-K annual report—i.e., by 180 days after the end of the retirement plan year.
- 30** Deadline for corrective distributions for failed ADP/ACP tests to highly compensated employees (HCEs), to avoid a 10% excise tax on the employer for EACA plans.
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- July**
- 17** Deadline for second 2023 minimum funding quarterly installment payment for DB plans that had a funding shortfall in 2022 —i.e., due 15 days after the last plan-year quarter-end.(Usually due July 15, which falls on a weekend in 2023. The PBGC provides that filing dates that fall on a Saturday, Sunday or holiday are delayed until the next business day.)
- 29** Summary of material modifications is due to participants—i.e., 210 days after the end of the plan year in which the change was adopted—unless it was included in a timely updated summary plan description (SPD).
- 31** Form 5330, which reports excise taxes related to employee benefit plans, is due to the IRS.
- Form 5500 is due to the DOL for plans with a December 31 plan year-end—i.e., due seven months after year-end. The Form 5500 filing can be delayed if the Form 5558 is filed with the IRS by this date; also called the Application for Extension of Time to File Certain Employee Plan Returns, it is used to apply for an extension to file forms 5500 and/or 5330.
- Deadline for annual benefit statements for individual account plans not offering participant-directed investments.

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- August** **14** Deadline for participant-directed DC plans to provide participants with the quarterly benefit/disclosure statement and statement of plan fees and expenses that were charged to individual plan accounts during second quarter of 2023. Note: Due 45 days after the end of the quarter.
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- September** **15** Deadline for money purchase pension, target benefit and DB plans to make required contributions to their plan trust—i.e., by 8 1/2 months after the plan year-end—and for S-Corporations and partnership plan sponsors that filed a corporate tax extension to make 2022 employer profit-sharing and matching contributions.
- Minimum funding deadline for the 2022 plan year for pension plans that do not have a funding shortfall for 2022.
- Form 5500 due to the Employee Benefits Security Administration (EBSA) from plans eligible for an automatic extension linked to a corporate tax extension.
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- October** **2** Summary annual reports are due to participants from plans with a December 31 year-end—i.e., due nine months after the plan year-end or two months after filing Form 5500 (unless Form 5500 filing is extended). (Usually due September 30, which falls on a Saturday in 2023. The DOL provides that filing dates that fall on a Saturday, Sunday or holiday are delayed until the next business day.)
- Start of the period to disseminate annual notices to participants, including the 401(k) safe harbor, automatic contribution arrangement (ACA), qualified automatic contribution arrangement (QACA) safe harbor, and qualified default investment alternative (QDIA)—i.e., from 90 to 30 days prior to the end of the current plan year.*
- 15** IRS deadline for filing the retroactive amendment to correct an Internal Revenue Code Section 410(b) coverage or Section 401(a)(4) nondiscrimination failure. (Note: October 15 falls on a weekend in 2023.)
- 16** Deadline for third 2023 minimum funding quarterly installment payment for DB plans that had a funding shortfall in 2022 —i.e., due 15 days after the last plan-year quarter-end. (Usually due October 15, which falls on a weekend in 2023. The PBGC provides that filing dates that fall on a Saturday, Sunday or holiday are delayed until the next business day.)
- A PBGC flat rate and variable rate annual premium filing and payment is due to the PBGC—i.e., by the 15th day of the 10th full month after the month the plan year began. (Usually due October 15, which falls on a weekend in 2023.)
- Deadline for filing Form 5500 after a plan files Form 5558 to request an extension. (Usually due October 15, which falls on a weekend in 2023.)
- Form 5310-A due to the IRS to give notice of the establishment of qualified separate lines of business. (Usually due October 15, which falls on a weekend in 2023.)

**If a traditional safe harbor 401(k) plan provides a nonelective contribution but also provides non-safe harbor matching contributions that are structured so the plan is not required to satisfy the actual contribution percentage (ACP) test, then the plan still must satisfy the safe harbor notice requirements. If a traditional safe harbor 401(k) plan that satisfies the safe harbor nonelective contribution requirements also provides non-safe harbor matching contributions and is required to satisfy the ACP test, then the plan need not satisfy the safe harbor notice requirements.*

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November 14 Deadline for participant-directed DC plans to provide participants with quarterly benefit/disclosure statement and statement of plan fees and expenses actually charged to individual plan accounts during third quarter of 2023. Note: Due 45 days after the end of the quarter.

15 Summary annual reports due to participants if the Form 5500 deadline was extended because of a corporate tax filing extension.

December 1 Final deadline to disseminate the 401(k) safe harbor annual notice to plan participants.

Final deadline for supplying the QDIA annual required notice to all participants who were defaulted into a QDIA no more than 30 days prior to the beginning of the plan year.

Final deadline to provide participants with the annual automatic enrollment and default investment notices; these may be combined with the QDIA notice.

Deadline to elect safe harbor status for the current plan year with non-elective contributions if the non-elective contribution is less than 4% of compensation.

15 Extended deadline for providing summary annual reports to participants if the Form 5500 deadline was extended because of filing Form 5558.

31 2023 RMDs are due. (Note that December 31 falls on a Sunday in 2022 so plan sponsors should plan accordingly)

Deadline for correcting a failed ADP/ACP test. (Note that December 31 falls on a Sunday in 2023 so plan sponsors should plan accordingly)

Deadline to adopt discretionary amendments to the plan, subject to certain exceptions—e.g., anti-cutbacks. (Note that December 31 falls on a Sunday in 2023 so plan sponsors should plan accordingly)

Deadline for a safe harbor plan to remove its safe harbor status for the following year or for an existing DC plan to convert to a safe harbor plan. (Note that December 31 falls on a Sunday in 2023 so plan sponsors should plan accordingly)

Deadline to elect safe harbor status for the prior plan year with a nonelective contribution of 4% or more of compensation.

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Participant Fee Disclosure Requirements

- Plan sponsors must furnish fee disclosures to participants on or before the date on which they or their beneficiary can first direct their investments in the plan and at least annually thereafter. Plan sponsors must furnish fee disclosures to participants on or before the date on which they or their beneficiary can first direct their investments in the plan and at least annually thereafter, which is now defined as “at least once in any 14-month period, without regard to whether the plan operates on a calendar year or fiscal year basis.”
- Plan sponsors must, at least quarterly, furnish participants with a statement of account expenses and the services for which they apply.
- If any changes are made to fee information, plan sponsors must communicate the change to participants at least 30 days, but not more than 90 days, in advance of it.

Miscellaneous Requirements

- Defined contribution (DC) plan statements must be provided at least annually for participants who do not have the right to direct their investments, and at least quarterly for those who do have the right.
- A QDIA [qualified default investment alternative] notice for plans that choose to use a QDIA must be provided to participants 30 days prior to their first investment. Note: If the plan has immediate eligibility, participants must be given the notice as soon as administratively feasible.
- Notice to participants of a qualified automatic contribution arrangement (QACA) or an eligible automatic contribution arrangement (EACA), and of a participant’s ability to opt out, must be provided 30 days prior to eligibility and then annually. For plans with immediate eligibility, notice may be given on or as soon as feasible after eligibility.
- Defined benefit (DB) or money purchase pension (MPP) plans must provide the Pension Benefit Guaranty Corporation (PBGC) with a notice of failure to meet minimum funding standards within 60 days of a missed payment or denial of payment waiver.
- An explanation of a plan’s pre-retirement survivor annuity must be provided to a participant between the first day of the plan year in which he reaches age 32 and the last day of plan year in which he reaches 35. If a participant is over 35 when hired, he should be given the explanation within one year of hire.
- An explanation of a joint and survivor annuity must be made to affected plan participants between 90 and 30 days before the annuity’s starting date.

—Rebecca Moore, with reviewing and editing by Summer Conley and Elise Norcini at Faegre Drinker Biddle & Reath LLP in Chicago