

403(b) vs. 401(k)

2022

Line	Topic	A	B	C
		403(b) Non-ERISA Title I Plans with Only Salary Deferrals	403(b) ERISA Title I Plans with Employer Contributions	401(k) Plan (includes profit sharing options)
1	Key Advantage	Permits higher level of salary deferrals by employees than in IRAs and SIMPLEs.	Allows both employer and employee contributions, and in amounts greater than under most any other plan.	Allows both employer and employee contributions, and in amounts greater than under most any other plan.
2	Who Can Establish?	Non-profit organizations exempt under IRC Section 501(c)(3) (e.g., churches, hospitals, foundations) and public educational organizations.	Non-profit organizations exempt under IRC Section 501(c)(3) (e.g., churches, hospitals, foundations) and public educational organizations.	Corporations, Sub-Chapter S, Self-Employed, Sole Proprietorships, Partnerships, Non-Profit. Governmental employers are not eligible to set up new 401(k) plans, but can maintain plans set up before 5/6/86.
3	ERISA coverage	If Employer's involvement is limited, plan is not subject to ERISA.	If the plan provides any contributions other than employee deferrals, it is subject to ERISA. However, plans maintained by church and governmental entities are not subject to ERISA, but a church sponsored plan may choose to be subject to ERISA.	Subject to ERISA.
4	Employer's Role	Offer payroll withholding and access to a range of investment options. CAUTION: If the employer takes on too much control, the plan can become subject to ERISA.	Advice from a financial institution or employee benefit advisor may be necessary. Annual filing of Form 5500 is required. Also may require annual non-discrimination testing to ensure plan does not discriminate in favor of highly paid employees.	Advice from a financial institution or employee benefit advisor may be necessary. Annual filing of Form 5500 is required. Also may require annual non-discrimination testing to ensure plan does not discriminate in favor of highly paid employees.
5	Written Document	Required, starting in 2009. Summary Plan Description not required.	Required, starting in 2009. Summary Plan Description required (SPD).	Has been required for many years. Summary Plan Description required.
6	Maximum Eligibility Requirements	The option to defer generally must be offered to all eligible employees (except (a) certain student employees and (b) employees who work less than 20 hours per week and are expected to work less than 1,000 hours per year). This is known as the Universal Availability rule, and it does not apply to church plans.	The option to defer generally must be offered to all eligible employees, except (a) certain student employees and (b) employees who work less than 20 hours per week and are expected to work less than 1,000 hours per year. This is known as the Universal Availability rule, and it does not apply to church plans. For employer contributions, the plan may exclude employees by class, as long as the coverage requirements are passed.	Generally, must be offered to all employees at least 21 years of age who worked at least 1,000 hours in a previous year. (Two-year eligibility requirement permitted in profit sharing component, but with immediate vesting.) (Excluding some of these employees subjects the plan to special coverage tests.) Union employees can be excluded.
7	Universal Availability vs. Ratio Percentage Test	Unlike 401(k) plans, the right to make elective deferrals must be extended to 100% of those individuals described in item 6 above.	Unlike 401(k) plans, the right to make elective deferrals must be extended to 100% of those individuals described in item 6 above.	Generally, to avoid more complicated testing, the percentage of the Non-Highly Compensated Employees (NHCEs) covered by the plan must be at least 70% of that of the Highly Compensated Employees (HCEs).

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8	Contributors to the Plan	Employee only	Both employer and employee may contribute.	Both employer and employee may contribute.
9	Nondiscrimination Testing on Deferrals (ADP test)	Not required.	Not required.	Required, unless the Employer commits to safe harbor rules.
10	Nondiscrimination Testing on Matching Contributions (ACP test)	N/A	Required ACP test, unless the Employer commits to safe harbor rules. Also, governmental and church plans are not subject to ACP test.	Required, unless the Employer commits to safe harbor rules.
11	Nondiscrimination Testing on Employer Non-matching contributions	N/A	Must pass 401(a)(4) and coverage testing; but many plans use automatically approved allocation methods.	Must pass 401(a)(4) and coverage testing; but many plans use automatically approved allocation methods.
12	Are Employer Contributions Mandatory?	N/A	No (unless the employer wishes to operate a "safe-harbor" 403(b) plan, which does not subject highly paid participants' matching contributions to a nondiscrimination test).	No (unless the employer wishes to operate a "safe-harbor" 401(k) plan, which does not subject highly paid participants' deferrals or match to nondiscrimination tests).
13	Contributors' Options	Pre-tax or Roth deferrals. Employee can elect how much to contribute pursuant to a salary reduction agreement.	Employee pre-tax (and Roth if the plan permits). Employee can elect how much to contribute pursuant to a salary reduction agreement. The employer can make additional contributions, including possible matching contributions, as set by plan terms.	Employee pre-tax (and Roth if the plan permits). Employee can elect how much to contribute pursuant to a salary reduction agreement. The employer can make additional contributions, including possible matching contributions, as set by plan terms.
14	Contribution Limits - Employee	The lesser of 100% of compensation or \$20,500 (for 2022). See footnote (b).	The lesser of 100% of compensation or \$20,500 (for 2022). See footnote (b).	The lesser of 100% of compensation or \$20,500 (for 2022). See footnote (b).
15	Catch-Up Contributions for Workers Over 50	An additional \$6,500 (for 2022) above and beyond other limits described above.	An additional \$6,500 (for 2022) above and beyond other limits described above.	An additional \$6,500 (for 2022) above and beyond other limits described above.
16	Special 15 Years of Service Catch-Up	Some employers can permit participants with 15 years of service to defer an additional \$3,000 per year, subject to a lifetime max of \$15,000. (See footnote a.)	Some employers can permit participants with 15 years of service to defer an additional \$3,000 per year, subject to a lifetime max of \$15,000. (See footnote a.)	Not available.
17	Contribution Limits -- Employee & Employer Combined	N/A	Contributions per participant must not exceed the lesser of 100% of compensation or \$61,000 (for 2022).	Contributions per participant must not exceed the lesser of 100% of compensation or \$61,000 (for 2022).
18	Contribution Limits -- Aggregate Employer Contribution	N/A	The employer can contribute amounts that, in the aggregate, do not exceed 25% of aggregate compensation for all participants.	The employer can deduct amounts that, in the aggregate, do not exceed 25% of aggregate compensation for all participants.

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19	When Must Contributions be Made?	As soon as reasonable, but no later than the 15th business day following the month in which the deferrals are withheld.	<u>Employer</u> : Any time during the calendar year. <u>Employee</u> : As soon as reasonable, but DOL safe harbor is no later than the 7th business day following the date on which the deferrals are withheld.	<u>Employer</u> : By tax-filing date plus extensions. <u>Employee</u> : As soon as reasonable, but DOL safe harbor is no later than the 7th business day following the date on which the deferrals are withheld.
20	Who Directs Investments?	Employee	Employee	Employer/Trustee, or plan may allow individual direction.
21	Permitted Investments	Can only use (a) annuity contracts purchased from insurance companies or (b) custodial accounts invested solely in mutual funds.	Can only use (a) annuity contracts purchased from insurance companies or (b) custodial accounts invested solely in mutual funds.	Must use a trust; and investment options include annuity contracts, mutual funds, stocks, bonds, real estate, and even some non- publicly traded securities.
22	Are Loans Available?	Yes	Yes	Yes
23	Vesting	<u>Employee</u> salary deferrals are always immediately 100% vested.	<u>Employee</u> salary deferrals are immediately 100% vested. <u>Employer</u> contributions may vest over time according to plan terms: immediate, cliff, or graded.	<u>Employee</u> salary deferrals are immediately 100% vested. <u>Employer</u> contributions may vest over time according to plan terms: immediate, cliff or graded.
24	Earliest Permitted Withdrawals	Must have triggering event (plan termination, death, separation from service, disability, age 59-1/2). Hardship withdrawals are permitted.	Withdrawals permitted after a specified event occurs (e.g., retirement, plan termination, age 59-1/2, etc.). Plan may permit hardship withdrawals. More liberal distribution rules may be allowed for Employer contributions.	Withdrawals permitted after a specified event occurs (e.g., retirement, plan termination, age 59-1/2, etc.). Plan may permit hardship withdrawals. More liberal distributions rules may be allowed for Employer contributions.
25	Required Minimum Distributions (RMD's) After Age 70 1/2	Required minimum distributions by April 1 following the later of calendar year in which the participant becomes age 70-1/2, or the calendar year in which he retires.	Required minimum distributions by April 1 following the later of calendar year in which the participant becomes age 70-1/2, or the calendar year in which he retires.	Required minimum distribution by April 1 following the later of calendar year in which the participant becomes age 70-1/2, or the calendar year in which he retires.
26	Aggregating RMD's	RMD's from multiple 403(b) contracts may be aggregated and taken from one or more contracts-- i.e., 403(b)s are treated more like IRAs than qualified plans, for RMD purposes.	RMD's from multiple 403(b) contracts may be aggregated and taken from one or more contracts-- i.e., 403(b)s are treated more like IRAs than qualified plans, for RMD purposes.	RMD's may NOT be aggregated -- each 401(k) and 401(a) plan must pay out it's own RMD if the individual is in more than one such plan.
27	How are Distributions Taxed?	Taxed as ordinary income.	Taxed as ordinary income.	Taxed as ordinary income.
28	Portability: Rollovers Among Plans	Distribution from 403(b) may be rolled to qualified plan, 403(b) plan, 457 governmental plan, IRA, or	Distribution from 403(b) may be rolled to qualified plan, 403(b) plan, 457 governmental plan, IRA or	Qualified plan, 403(b) plan, 457 governmental plan, SEP, IRA
29	Form 5500 filing, and Summary Annual Report to participants	Not required.	Required, starting with plan years beginning on or after 1/1/09.	Required.
30	Audit Requirements for Form 5500	Not required.	Required if over 100 participants, for plan years beginning on or after 1/1/09.	Required if over 100 participants.

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31	Bankruptcy protection	Sixth Circuit Court (MI, OH, KY, TN) has concluded protection from creditors does not apply to annuity contracts not held pursuant to a trust instrument.	Sixth Circuit Court (MI, OH, KY, TN) has concluded protection from creditors does not apply to annuity contracts not held pursuant to a trust instrument.	Assets are shielded from creditors.
32	Merging plans	403(b) plans can only be merged into other 403(b) plans.	403(b) plans can only be merged into other 403(b) plans.	401(k) and 401(a) plans can be merged with each other, but NOT with 403(b) plans.
33	Pre-approved Plan Documents	Prototype documents available.	Prototype documents available.	Prototype documents available.
34	Plan Terminations	Can now terminate a 403(b) plan and distribute assets (or allow rollovers into another plan), as long as there is not a successor 403(b) plan within 12 months.	Can now terminate a 403(b) plan and distribute assets (or allow rollovers into another plan), as long as there is not a successor 403(b) plan within 12 months.	If terminated, then generally a new 401(k) plan must not be established for the next 12 months.
35	Control Groups	Similar to that of for-profit companies; but the 80% common control test is applied to trustees and directors as if they had equal "ownership" of the tax exempt entities they control.	Similar to that of for-profit companies; but the 80% common control test is applied to trustees and directors as if they had equal "ownership" of the tax exempt entities they control.	Companies in the same control group must be treated as one large employer for purposes of demonstrating that separate plans or covering only some groups does not violate coverage / nondiscrimination rules. There are 80% and 50% common ownership rules that come into play.

- a Long-term employees participating in 403(b) plans, employed at teaching institutions, hospitals, churches, home health care organizations, and health and welfare service agencies, may be offered the 15-year catch-up contributions.
- b Employees must combine contributions made to their 403(b) accounts with contributions made to all other plans in which they participate (other than 457 plans): qualified plans, SEPs and SIMPLE IRAs of all corporations, partnerships, and sole proprietorships in which they have more than 50% control. The employee's total elective deferrals to all of these plans combined cannot exceed the annual deferral limit (\$20,500 in 2022).

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