

## When Is A Plan Top Heavy?

When the key employees own more than 60% of the plan's adjusted assets as of the plan determination date. The determination date is the last day of the preceding plan year. For example, a test to determine if a plan is top heavy for 2017 is valued as of December 31, 2016.

For an initial plan year, the plan determination date is the last date of the plan year. For example, an employer sponsors a 401k plan for the first time during 2017. The plan top heavy test will be run as of December 31, 2017 to determine if the plan is top heavy for both plan years 2017 and 2018.

## Key Employee Definition

A key employee is an employee, who at any time during the plan year containing the determination date is:

- a more than 5% owner of the employer (family attribution rules apply).
- a more than 1% owner of the employer with annual compensation greater than \$175,000 (family attribution rules apply).
- an officer with annual compensation greater than \$175,000 (2017 indexed).

The number of officers is generally determined as 10% of the employees. This 10% is capped at 50 officers and has a minimum of 3. To exemplify:

So if there are less than 30 employees, the maximum officers would be 3. If there are between 31 and 499 employees, the maximum officers would be 10% of those employees.

If there are over 500 employees, the maximum officers for the test would be capped at 50. The authority of a job is used to determine "officer" status, rather than officer title.

## What Assets Are Includable In The Top Heavy Ratio?

Plan contributions (excluding current year catch-up contributions), related rollovers, and merged/transferred related plan assets. Only first year plans may include end of year employer contributions in the ratio.

## Are All Employees 401k Balances Included In The Top Heavy Ratio?

The top heavy ratio must include the value of accrued benefits currently held by the plan for former employees, and distributions made to such former employees, but only if the former employee had at least one hour of service credited during the year ending on the determination date. Additionally, in-service distributions including hardship withdrawals made during the previous 5 years are added back to the top heavy equation.

## What Happens If My Plan Is Top Heavy?

Eligible non-Key employees are required to receive a minimum top-heavy allocation from the employer. The allocation is limited to 3% of employee pay or the rate at which highest key employee plan benefited [employee + employer contributions], whichever is less. Moreover, matching contributions allocated to employees during the plan year can reduce the minimum top heavy allocation due. Key employees may also receive an allocation, but it is not required.

### When Is The Top Heavy Contribution Due?

The top heavy contribution is due by the close of the year following the year in which the plan is top heavy. For example, if your plan is determined to be top heavy for 2017, then the contribution is required to be funded by the end of 2018. PPC will calculate the contribution due and forward to you for review and payroll company/department. Most plans have a provision that the employee must be employed as of the end of the plan year in order to receive an allocation.

### What Happens If The Top Heavy Contribution Is Not Made?

The liability stays with the plan until the contribution is made. The plan may become disqualified.

### Are All Plans Tested For Top Heavy?

Employers that adopt a Safe Harbor plan are exempt from the top heavy and discrimination tests so long as they comply with the safe harbor provisions of the plan. Plans that have a longer eligibility for safe harbor contributions than for elective deferrals are not exempt from top heavy