MULTIPLE EMPLOYER PLANS 101

Streamlined Approach For Your Retirement Plan

What is a Multiple Employer Plan?

A Multiple Employer Plan is a retirement plan structure available to more than one employer, who are also members of bona-fide group or association. These employers typically benefit from economies of scale and reduced fiduciary liability. The basic structure provides employers with flexible plan design solutions to meet the employee and employer expectations. A multiple employer plan has one named entity, formally titled “plan sponsor”, responsible for adhering to the regulatory requirements and filings associated with offering a retirement plan.

What is the requirement to establish a Multiple Employer Plan?

At a minimum, the plan must be set up by an entity or committee that has employees, advocates for employers, and is structured as a bona-fide group or association.

Can individual members join the multiple employer plan?

NO. It must be an employer that chooses to participate in the multiple employer plan. They would then make the plan available to their employees.

What is a bona-fide group or association?

A group of unrelated employers having commonality through a central advocating organization, and for MEP purposes, coming together for reasons other than 401(k) benefits. The underlying member employers of the group or association would have the ability to make decisions about the group or association through a form of voting authority.

Are there different types of Multiple Employer Plans?

Not for 401(k) plans. The retirement industry has been using “Open MEP” and “Closed MEP” as terms for multiple employer plans. However, there is only one recognized arrangement, which is commonly referred to as a “Closed MEP”.

What is the key difference between an “Open MEP” and a “Closed MEP?

A “Closed MEP” is a recognized arrangement sponsored by a bona-fide group or association. A “Open MEP” is not recognized; but, in theory would not be sponsored by a bona-fide group or association.
What are the structures of a “Closed MEP” and “Open MEP”?

“Closed” MEP:

A closed MEP is a retirement plan structure, for more than one unrelated employer, that is recognized by the DOL and IRS. The plan is sponsored by an entity or decision-making committee of a bona fide group or association that has employees. This bona-fide group or association must come together for reasons other than 401(k) benefits. Only member employers of the bona-fide group or association can choose to participate in the plan. Member companies can continue to participate until such time they are no longer a member of the bona-fide group or association. The member companies must have the ability to make plan related decisions or vote for the decision-making committee.

“Open” MEP:

The term “Open MEP” is widely used within retirement industry. However, an ‘Open MEP” is NOT technically recognized as a 401(k) plan type. Theoretically, this plan would be sponsored by an entity that has no other relationship with the employers that choose to participate. There is no formal bona-fide group or association structure, and may not have employees. The only reason the employers come together is for 401(k) purposes only. The plan sponsor would typically hire many service providers to defer their liability of sponsoring a 401(k) plan. The underlying employers do not share in the decision-making process of the multiple employer plan.

Can I set up a multiple employer plan for my clients?

No. There must be a bona-fide group or association. Employers that pay for a service does not create a bona-fide group or association.

What are the biggest risks for a bona-fide group or association sponsoring a multiple employer plan?

The bona-fide group or association takes on full fiduciary liability and responsibility when they sponsor a multiple employer plan. This includes all regulatory filing and audit requirements, correcting mistakes, paying fines/penalties and ensuring all contributions are deposited timely. Some of these are direct tasks of the plan sponsor; while others are employer tasks. However, the plan sponsor is solely responsible for maintaining the tax qualification status of the plan and all employer level mistakes; which could be very costly.

What is the "Bad Apple Rule"?

The plan sponsor of an MEP is responsible for ensuring all participant contributions are removed from employer assets in a timely fashion. The general rule for timing is as soon as administratively possible; which may different for all employers. Contributions can be considered late if an employer changes the timing of when they submit contributions; or will be considered missed if they forget to deposit. The failure to meet the rule will require costly corrective actions. The plan sponsor is solely responsible for all contributions into the plan; the employers are NOT. Therefore, if one or many employers have late contributions, the plan sponsor must correct, and is responsible for all applicable costs. Failure to correct, could result in the loss of the tax qualification status of the plan.

What is the Reduced Liability for employers?

The plan sponsor of the MEP must file an annual IRS form 5500 and applicable audit to confirm the plan is operating according to regulatory requirements. If the plan is failing to meet these requirements, the plan sponsor may be subjected to monetary penalties. The underlying employers do not share this responsibility. However, an employer does not eliminate their fiduciary liability totally. An employer that chooses to join the MEP will always be accountable based on their decision to participate in the plan.

What type of bona-fide groups or associations set up MEP's?

Common groups that set up MEP's are cooperatives/consortiums, associations, professional employer organizations and employers that may share small ownership but not enough to be considered affiliated service or control groups.

What are common items to consider before a bona-fide group or association chooses to sponsor an MEP?

- Need to employ individuals as single point of contact for service providers, employers and participants
- Assign an individual as the fiduciary and responsible party for signature and regulator inquiries
- Hire service providers to monitor and/or consolidate payroll
- Need for constant communication with employers to ensure all contributions are submitted timely
- Gather interest from the member employers before setting up the plan
- Ongoing education for employers and participants
- Hire and fire service providers
- Create a formal committee to make decisions about the MEP
- Acquire fiduciary insurance & fidelity bond
- Hire an accountant for plan audit
- Gather advice from an ERISA attorney
- Cost to mail notices to participants
- Perform required diligence on fees, plan design investments and all service providers

Can the group or association make money by sponsoring the multiple employer plan?

NO.

What is the benefit to the group or association to set up a multiple employer plan?

The multiple employer plan is an additional incentive to attract new members. Employers are likely to become a member of a group that offers a 401(k); versus a group that does not. Because membership is required to participate in the plan, employers stay with the group longer. The employees of the employer become familiar with the group or association, and may consider becoming individual members.

Are multiple employer plans less expensive to participants compared to a traditional single employer plan?

Not necessarily. A multiple employer plan has participating employers, which is not a layer that exists in a single employer plan. As a result, the group will incur additional expenses to respond to inquiries, obtain levels of fiduciary indemnification, marketing and meeting regulatory requirements. All these expenses are commonly passed on to participants in the form of fees deducted from accounts and high investment expenses.