

SMALL TALK
By KELLY SPORS



Part-Time Employees and 401(k)s

Q: *Must a business with one part-time employee who works 20 or fewer hours a week contribute toward that employee's 401(k)?*

--A.B., Charleston, S.C.

A: Whether your business offers a 401(k) plan at all is completely up to you. But if you do offer one, certain part-time workers must be included.

Employees with at least 12 consecutive months of service and who worked at least 1,000 hours in the previous year -- on average at least 22 hours a week -- generally must be eligible to contribute to the employer's 401(k) plan and get the same matching contribution other employees receive, says Rick Meigs, the president of 401khelpcenter.com LLC, a Web site that provides information to sponsors of and participants in 401(k) plans.

"That's why you see a lot of employees held at 20 hours a week -- because employers don't want to pay them retirement benefits," Mr. Meigs adds.

Employers also can exclude employees under 21 years of age, according to the Internal Revenue Service. You can read more about small-business retirement plan rules in IRS publication 3998 on IRS.gov.

Plans with a general waiting period of less than 12 months generally must let part-timers participate once they pass the wait period and worked more than 1,000 hours annually. Even very small businesses where the owners set up a 401(k) so they can contribute themselves must follow these rules if they take on a part-time employee.

Another thing to watch out for is the IRS's antidiscrimination rules, which are meant to prevent retirement plans from favoring highly compensated employees over low-paid ones. Businesses with part-time employees may be especially prone to problems.

Employers can avoid the headache of passing the discrimination test by setting up what's called a "safe harbor" plan where you must make a 3%-of-income nonelective annual contribution to each employee's 401(k).

Q: *My main source of income from my start-up, an online directory of business services, will be a yearly listing fee as well as a fee based on the number of ZIP Codes that members want their services listed under. Am I supposed to charge them sales tax on that?*

--Alen Blazevic, Sunnyvale, Calif.

A: What's taxable -- and whether you need to collect tax from out-of-state customers -- depends on the sales-tax rules in the state your business is based in, as well as possibly others where you have physical locations.

Sales of intangible goods, such as service or membership fees, were traditionally not taxed, but more states are taxing them with the rise of electronic commerce, says Ankeet Mehta, a consultant for the Sales Tax Institute in Chicago. "It's totally state specific, so he should focus on the state he's based in," Mr. Mehta says.

But the exact taxation rules can get complex. Some states, for instance, will charge sales tax on membership fees related to the sale of tangible goods or fees over certain dollar amounts. So it's difficult to generalize.

The easiest way to find out rules in a particular state is to contact the state's tax authority, such as California's Board of Equalization. Most states have hotlines for such questions.

Send your small-business questions to smalltalk@wsj.com.