

# 401(k) Rescue

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## Our 401(k) Fix-It Series

*401(k) Rescue, the Ekon Benefits 401(k) Fix-It Series, describes the most common 401(k) mistakes as determined by the IRS. We provide explanations of common mistakes, suggested prevention techniques and recommendations on correction methods.*

*Does your 401(k) Plan need to be rescued?*

### Common Mistake #5—

Failing nondiscrimination testing.

Each year, 401(k) plans must successfully pass ADP and ACP nondiscrimination testing to ensure that the Plan does not benefit owners and highly compensated employees (HCEs) disproportionately to non-highly compensated employees (NHCEs).

An imperative component of ADP/ACP testing is correctly identifying the HCE group. This group includes employees making over a set dollar amount in a given year, more than 5% owners and certain family members of owners, regardless of compensation.

Your Plan Document will specify whether Current or Prior-Year Testing is to be used. This election can be changed, but only in certain cases.

The **Actual Deferral Percentage (ADP)** test uses a ratio of elective deferrals to compensation to determine if HCEs contribute too far in excess of NHCE contribution rates. The **Actual Contribution Percentage (ACP)** test uses a ratio of matching contributions to compensation to ensure matching contributions were not disproportionately contributed to HCEs. Based on Plan provisions, you may be subject to one, both, or neither of these tests.

When a plan fails nondiscrimination testing, corrective action must be taken, including providing corrective distributions or refunds to certain participants or contributing Qualified Nonelective Contributions (QNECs). If twelve or more months have passed since the end of the Plan Year, the IRS Employee Plans Compliance Resolution System (EPCRS) should be used to remedy the situation.

Consistent failure of nondiscrimination testing is a primary reason for implementing Safe Harbor provisions or rules limiting the contribution percentages for HCEs. Projected testing can forecast the possibility of refunded contributions. Timely correction of test failures is essential, therefore ensure service providers have all necessary data to complete testing as soon as possible following your Plan's year end.

For a complete listing of the most common 401(k) mistakes, please visit the IRS 401(k) Plan Fix-It Guide at [http://www.irs.gov/Retirement-Plans/401\(k\)-Plan-Fix-It-Guide](http://www.irs.gov/Retirement-Plans/401(k)-Plan-Fix-It-Guide)

For assistance in correcting a plan error, please contact Ekon Benefits at (314)367.6555 or [info@ekonbenefits.com](mailto:info@ekonbenefits.com)