



One of the most impactful provisions of the SECURE Act is the ability to retroactively adopt a new profit sharing, defined benefit, or cash balance plan after the close of the plan year. However, regardless of your business entity type you cannot retroactively adopt a 401(k) plan.

An employer now has until the due date of the business's tax return, including extensions, to establish a profit sharing, defined benefit, or cash balance plan beginning with the year 2020. The tax filing deadline varies based on the employer's business entity type.

Let's look at an example:



ABC Clinic wants to establish both a profit sharing plan and a cash balance plan for purposes of making tax deductible contributions for the company's December 31, 2021 tax year-end. The chart below shows the deadline by which when ABC Clinic can establish the new plans. ABC Clinic can prospectively add a 401(k) deferral component to the profit sharing plan when the plan document is signed in 2022.

Entity type	IRS Form	Deadline to establish a new plan for 2021	Deadline if extension is filed
S Corporation	1120-S and K-1	March 15, 2022	September 15, 2022
C Corporation	1120 and K-1	April 15, 2022	October 15, 2022
Partnership	1065 and K-1	March 15, 2022	September 15, 2022
Sole Proprietorship	1040 and Schedule C	April 15, 2021	October 15, 2021

Note: Employee salary deferral provisions can be added only prospectively to an existing profit sharing plan, but to benefit from safe harbor status, salary deferral provisions must be in place for at least the last 3 months of the plan year with safe harbor provisions implemented.



For a calendar year retirement plan, the Form 5500 filing deadline continues to be July 31 unless Form 5558 is filed by July 31 to extend to October 15. Employers who do not file Form 5558 qualify for an automatic Form 5500 extension if their business tax return is extended and their plan year is the same as their tax year. ***It is important to remember all of the following must be done by the tax return deadline when a retroactive new plan is established:***

- Provide complete prior year employee census information
- Have benefits calculated, contributions determined, and apply limits: deduction limits and maximum amounts
- Have any applicable IRS-required tests prepared: coverage, nondiscrimination, top-heavy, minimum participation
- Have retirement plan document(s) provided
- Review and execute the plan documents (by employer/trustees)
- Establish investment account(s) and make contributions
- Provide proof of contributions for Form 5500 preparer
- Have Form 5500 prepared, including all required schedules
- File Form 5500 and schedules with IRS/DOL

If there is any possibility a plan might be adopted retroactively, we recommend the client file an extension. Even with the extended deadline, contact us as soon as possible to begin the process.