

H. C. FOSTER & COMPANY

Retirement and Welfare Plan Actuaries

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Time To Terminate SIMPLE Plans – Fall 2021

As we discussed in our Spring 2019 Newsletter titled, When SIMPLE Is Not Simple and Is Expensive, SIMPLE Plans include all the administrative and fiduciary disadvantages of tax qualified retirement plans with none of the advantages of a self-administered tax qualified retirement plan the employer sponsors and controls. Employees and the investment source must be notified in writing before November 2, 2021 to terminate a SIMPLE Plan for 2022. The following is copied from IRS' website titled SIMPLE IRA Plan FAQs listing the required procedures to terminate a SIMPLE Plan:

“Terminating a SIMPLE IRA Plan

Other than the first year you set up your plan, SIMPLE IRA plans must be maintained for a whole calendar year. Once started, you must continue your SIMPLE IRA plan for the entire calendar year, funding all contributions promised in the employee notice. If you decide your SIMPLE IRA plan no longer suits your business, consult with your financial institution to determine if another type of retirement plan might be a better match.

How do I terminate my SIMPLE IRA plan?

Step 1: Notify your employees within a reasonable time before November 2 that you'll discontinue the SIMPLE IRA plan effective the following January 1.

Step 2: Notify your SIMPLE IRA plan's financial institution and payroll provider that you won't be making SIMPLE IRA contributions for the next calendar year and that you want to terminate your contributions.

Step 3: You should keep records of your actions, but you don't need to notify the IRS that you have terminated the SIMPLE IRA plan.

Example: Acme Company decided on November 18, 2014, to terminate its SIMPLE IRA plan as soon as possible. The earliest effective date for the termination is January 1, 2016. Acme must notify its employees before November 2, 2015, that it won't sponsor a SIMPLE IRA plan for 2016. You cannot end your plan in the middle of the calendar year. Once started, you must continue your SIMPLE IRA plan for the entire calendar year, funding all contributions promised in the employee notice.”

The IRS website SIMPLE IRA Plan FAQs is 13 pages which hints at the complexity of “SIMPLE” plans.

Your SIMPLE Plan should permit transfers of distributions to an employer sponsored, self-administered retirement plan if available, whether it be a Profit Sharing Plan that includes Section 401(k) provisions, or a Defined Benefit Pension Plan. If participants are to be provided the option to transfer their distributions to a new employer sponsored plan, a plan document must be adopted effective January 1, 2022 and in place early in January. A SIMPLE Plan can not coexist with a tax qualified retirement plan.

Regardless of the options an employer sponsored retirement plan provides, the Plan Sponsor should control the plan document and investment management function through unallocated investment pools rather than default to mutual funds and retail market packaged investment arrangements. ERISA permits the delegation of investment management functions to an outside professional investment manager who assumes the fiduciary responsibility for investment management. Section 401(k) Participants can still be provided individual investment direction in unallocated accounts from among a selected universe of investments the Plan Sponsor and investment manager monitor.

On back is a sample notification to employees of a SIMPLE Plan's termination for the 2021 calendar year.

Continued, next page.

“[Company Letterhead]

[Date, before November 2, 2021]

To: All Employees

From: []

Re: [Employer Name]
SIMPLE IRA Plan

Dear [Employee's name]:

I am writing to formally notify you of our decision to discontinue our company sponsored SIMPLE IRA Plan as of the end of the 2021 calendar year.

Effective January 1, 2022, we will sponsor a self-administered, tax qualified retirement plan for our eligible employees. Employees currently contributing to the SIMPLE IRA plan will discontinue doing so as of December 31, 2021. We believe a company sponsored, tax qualified retirement plan will permit better investment returns and more benefit options than the current SIMPLE Plan.

Employees having account balances in the SIMPLE IRA plan may roll their distributions to another tax qualified retirement plan arrangement without taxes or early-distribution penalties. The options for a rollover will be announced later with an explanation of available receptacles for the rollovers.

Please contact me with any questions.

Sincerely,

XXX/xx

[Employer Name]

[Name]”

We note the following:

1. Copies of any communications to employees should be retained in their personnel files.
2. Steps should be taken to prevent the SIMPLE Plan investment source from diverting participants' distributions to its investment products that may not be the best choices.
3. Any replacement plan effective January 1, 2022 should be an individually designed, self-administered defined contribution or defined benefit tax qualified retirement plan completely under the Plan Sponsor's control. Care should be taken to avoid prototype plan documents, IRA arrangements, and packaged investment arrangements, all of which cater to unsophisticated retail consumer markets.

Please e-mail any questions or comments.