

What is a Top-Heavy Plan?

The top-heavy determination is one of the nondiscrimination tests required by the IRS. Many employers have a 401(k) plan or some other form of defined contribution plan that needs to meet what are called “top-heavy plan rules.” The top-heavy rules are designed to ensure that lower paid employees receive at least a minimum benefit in plans where a majority of the plan’s assets are owned by owners or higher paid employees; referred to as “key employees” as defined below. If the employer maintains more than one plan, the plans must be combined for top-heavy determination.

A key employee is an employee, who at any time during the plan year containing the determination date (the last day of the preceding plan year) is:

- A more than 5% owner of the employer (family attribution rules apply);
- A more than 1% owner of the employer with annual compensation greater than \$150,000 (family attribution rules apply); or
- An officer with annual compensation greater than \$185,000 for 2020

A plan is top-heavy when, as of the last day of the preceding plan year (the determination date), the total value of the plan assets of key employees exceeds 60% of total value of the plan assets.

For top-heavy purposes, aggregate - not yearly - contributions and earnings are counted to ensure the top paid group does not benefit disproportionately. Note: It’s even possible for a plan to become top-heavy after a year in which no contributions are made.

When a plan is top-heavy, minimum employer allocation requirements must be satisfied.

The top-heavy minimum is based on the amounts contributed by key employees. The top-heavy minimum is the lesser of:

- 3% of total compensation for the entire plan year, or
- The highest percentage contributed for a key employee

Usually the minimum contribution will be 3%. Elective deferrals made by a non-key employee in a 401(k) plan do not count toward the minimum. The IRS requires the top-heavy contribution to be made to all non-key employees who were eligible to participate in the plan (regardless if they deferred or not) and are employed on the last day of the plan year. Terminated participants may be excluded from receiving the contribution. A minimum hour requirement, such as 1,000 hours, cannot be imposed to be eligible for the contribution.

A safe harbor plan may use safe contributions towards satisfying the top-heavy minimum contributions, and may also be exempt from the top-heavy requirements.