

THE ORANGE COUNTY

REGISTER

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BUSINESS MONDAY

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401-k benefit is privilege, not right

Q. A few months ago I changed jobs. The new company gave me an appointment letter. One of the benefits was company matching in 401-k with immediate vesting. They were depositing their match every paycheck till last month, when the company decided to change the plan. They will contribute; however, the vesting will be dependent on the years with the company. For example, 0 to 2 years 0 vesting, 2-3 years 10 percent vesting for the company match. I am contributing to my 401-k but feel that the company has taken away about \$3,000 per year from me. Can they do this without compensating me for the lost amount?

A. "First, you should always consult your company's 401-k fi-

nancial adviser when any changes are made to your retirement benefits," said Keith G. Bremer, partner of Newport Beach-based law firm Bremer Whyte Brown & O'Meara LLP.

"Also, it is important to remember that benefits are a privilege, not a right. Any unvested 401-k plan can be revised, modified or taken away by your employer.

"Second, the answer to your questions is typically yes, your employer can do this. You are always entitled to 100 percent vesting in your own contributions and salary reduction contributions and their investment earnings.

"However, employers are NOT required to contribute to

their employees' 401-k accounts in any way. Employer contributions are completely voluntary on the part of the employer (unless being used to satisfy a plan imbalance, in which case qualified nonelective contributions be made to, say, all non-highly compensated employees' accounts).

"Consult with your attorney about the language of the appointment letter."

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