

INSIGHT: Who CARES? Retirement Plan Withdrawals OK if You're Impacted by Coronavirus

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The CARES Act allows employees impacted by the coronavirus to make early withdrawals from their retirement accounts without penalties. Hall Benefits Law attorneys examine the act's relief and give recommendations for retirement plan fiduciaries.

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was passed by Congress and signed by President Donald Trump on March 27 (Enactment Date) and offers relief to employees who may need to tap into their retirement accounts.

The CARES Act requires that employers who wish to take advantage of these optional expanded rules must amend their retirement plans no later than the end of the 2020 plan year.

The relief includes:

- Relief from the 10% early withdrawal tax for individuals looking to request an in-service distribution or a hardship withdrawal from their company retirement plan prior to attainment of age 59 1/2; and
- For individuals planning to request loans from their employer retirement plan, an increase in the funds available for loan withdrawal, and it also provides for a one-year delay in all loan repayments due through the end of 2020.

Changes to Participant Loan Rules Under the CARES Act

The CARES Act provides for significant changes to the plan loan rules under Code Section 72(p). First, the CARES Act allows increases the loan amount available for qualified individuals (i.e., those impacted by coronavirus) the lesser of:

- \$100,000 (for loans unrelated to coronavirus, the limit is \$50,000); or
- The 100% of the vested account balance (for loans unrelated to coronavirus, the limit is the greater of \$10,000 or 50% of the present value of the participant's vested account balance).

Second, the CARES Act allows for these loans to qualified individuals beginning with the Enactment Date and through the subsequent 180-day period. Borrowers are not required to begin repayment of the loan until one year following the date of loan origination. Third, the CARES Act also allows for a one-year delay for all outstanding plan loan repayments for qualified individuals. This extension applies to all repayments due beginning on the date of the enactment of the CARES Act March 27 and through December 31. The CARES Act further provides that all subsequent loan repayments should be appropriately adjusted to reflect the due date and any accrued interest.

These relaxed loan rules are available for distributions from eligible retirement plans (IRAs, 401(k) plans, 403(b) plans, and 457(b) plans) beginning on the date of CARES Act enactment through Dec. 31.

The expanded distribution rules are generally available for any eligible individual who is diagnosed with coronavirus by a test approved by the Center for Disease Control Prevention; whose spouse or dependent (as defined in Code Section 152) is diagnosed with such virus or disease by such a test; or who experiences adverse financial consequences as a result of coronavirus due to:

- Quarantine, layoff, furlough, or having reduced work hours;
- Being unable to work due to lack of child care;
- Closure or reduction of hours of a business owned or operated by an individual impacted by coronavirus or other factors as determined by the Department of Treasury

Employer Considerations for Participant Loan

Employers who elect to take advantage of the expanded loan and hardship withdrawal provisions provided for under the CARES Act must amend their plan to accommodate these new rules and provide communications (including, for example, a summary of material modifications) to participants that clearly delineate the new criteria for loans.

As a best practice, employers who elect to amend their retirement plan to allow for expansion of loan rules under the CARES Act will need to ensure the new limits and requirements are properly applied in operation (including, for example, that no loan amounts to qualified individuals exceed \$100,000 in the aggregate).

For those non-coronavirus related loans, employers are still responsible for enforcing loan repayment schedules that include level payments that must be made by the borrowing participants at least quarterly.

Changes to Hardship Withdrawals Under the CARES Act

The CARES Act includes an exemption of qualified individuals from the 10% early withdrawal tax for the first \$100,000 coronavirus-related hardship distributions. This exemption is an aggregate limit and applies across the employer's controlled group.

These distributions would not be subject to the general IRS early-withdrawal penalty of 10%, but pre-tax contributions that are distributed would be subject to income tax. The CARES Act permits any income tax owed to be spread out over three years unless the individual elects to the contrary.

To be considered an eligible coronavirus-related distribution, the distribution must be made to individuals under similar circumstances as those described above for expanded plan loans (e.g., an individual who is diagnosed with the SARS-CoV-2 virus or coronavirus). Employers may rely upon a participant's certification that he or she satisfies the requirements of a qualified individual.

The amount of the coronavirus-related hardship distribution may be repaid within three years of the date the distribution was originally received. Such repayment may be made in one or more payments (with no required minimum repayment) over the three-year time period.

If the borrowing participant elects not to repay the loan, such distribution will be included in his or her income ratably over a three-taxable-year period beginning with the taxable year in which the withdrawal was taken.

Employer Considerations for Hardship Withdrawals

The plan is responsible for determining whether the need described in the hardship request satisfies the amount requested. Therefore, retirement plan fiduciaries must carefully review and compare the hardship withdrawal documentation with the amount requested by the participant.

Retirement plan fiduciaries should maintain (or develop) a comprehensive paradigm for hardship withdrawal requests, including documentation provided by the participant to justify the immediate need for a hardship withdrawal. Failure by retirement plan fiduciaries to properly maintain documentation may have negative consequences for the plan (for example, a determination by the IRS that the hardship withdrawal was an impermissible distribution).

In this time of extreme financial uncertainty, retirement plan fiduciaries with a hardship safe harbor definition should consider whether to expand the hardship definition to include any immediate and heavy financial need. This change is likely to ensure that those impacted by coronavirus have access to hardship withdrawals if the need arises.

Coronavirus has significantly disrupted operations for retirement plan vendors making it even more important for retirement plan fiduciaries to review their vendor contracts to determine what guarantees and indemnification provisions apply to vendor performance.

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Author Information

Anne Tyler Hall is principal attorney at Hall Benefits Law, the fastest-growing boutique ERISA law firm nationally, which avoided or abated over \$60 Million in ERISA penalties for its plan sponsor clients in years 2018-2019. She and her team believe that strategically designed, legally compliant benefits plans are the cornerstone of business stability and rapid growth, and they currently work with plan sponsor clients across 29 states.

Scott Santerre serves as senior compliance counsel at Hall Benefits Law. Prior to joining HBL he worked as an ERISA attorney as in-house counsel with some well-known insurance companies in their ERISA legal department, including New York Life and Standard Insurance Company.

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