CARES ACT - QUICK REFERENCE GUIDE

With the flood of information, we wanted to provide financial advisors and plan sponsors with a summary FAQ quick reference guide for key topics. Here are the Most Commonly Asked Questions and Answers currently available. We will keep you apprised of any further developments.

EMPLOYEE LAYOFFS

Q. Are employee layoffs considered severance of employment?

A. A severance of employment is based on "facts and circumstances." Only the Employer can determine whether or not employees have a severance of employment, however there is limited guidance that may help you determine if there is a severance of employment:

- The severance was in good faith (bona fide).
- The individual is not treated as an employee for other purposes (such as participation in employee benefit programs).
- There is a reasonable expectation the person will no longer be performing any more duties with the Employer.

Q. Can employees who have a severance of employment take a distribution?

A. Severance of employment is a distributable event. Please review the other questions in this FAQ for concerns around layoffs, specifically those that qualify as severance of employment.

Q. What happens if people who are laid off (not terminated) have outstanding loans from a retirement plan?

A. The CARES Act allows participants with loan payments due between March 27, 2020, and December 31, 2020, to delay their repayments for up to one year without defaulting. Participants may also continue to make payments by personal check if they are able.

Q. We may have to lay off many of our employees. Is there anything we should think about regarding our retirement plan?

A. A partial plan term may be triggered if more than 20% of total plan participants are laid off in a particular year:

- Partial terminations can occur in connection with a significant event, even when these events are not within the Employer's control.

- Current law requires all affected employees to be fully vested in all of their account balances as of the date of a full or partial plan termination.
  - An affected employee in a partial termination is generally anyone who left employment for any reason during the plan year in which the partial termination occurred and who still has an account balance under the plan.
- Note, we are watching IRS guidance concerning any potential relief for partial termination issues.

SAFE HARBOR CONTRIBUTIONS

Q. Can I stop my Safe Harbor contributions?

A. If your plan has a mandatory Safe Harbor contribution (either matching or non-elective), the answer is yes, so long as the annual Safe Harbor Notice included language allowing a mid-year reduction or full suspension of Safe Harbor contributions. While your plan can be amended at your request to remove the provision for Safe Harbor contributions mid-year, be aware that your plan must:

- The severance was in good faith (bona fide).
- The individual is not treated as an employee for other purposes (such as participation in employee benefit programs).
- There is a reasonable expectation the person will no longer be performing any more these events are not within the Employer's control.

Important considerations include:

- If you stop Safe Harbor contributions mid-year, your plan may be subject to Top Heavy contribution requirements that could exceed the cost of the Safe Harbor contribution. If your plan is Top Heavy, it could trigger a required employer contribution to the plan of up to 3% of eligible compensation.
- There is the possibility that the IRS will provide relief on funding requirements. We'll keep you apprised of developments.
- Check with your TPA regarding the setup of your document. You can potentially delay ongoing contributions by changing the timing of your deposits to be plan-year based, or even to stop and potentially re-start your non-elective contribution.

PROFIT SHARING CONTRIBUTIONS

Q. Will I need to make a Profit Sharing contribution this year?

A. Most Profit Sharing contributions are not mandatory. A plan sponsor decides each year whether to make a Profit Sharing contribution, typically depending on that year's profits. If you have not yet made any Profit Sharing deposits into your plan for 2020, there is no requirement to make a contribution in 2020.

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An important exception is if you have a Cash Balance Plan paired with a Defined Contribution Plan, have a Money Purchase Pension Plan, or if your plan is considered Top Heavy. For these, you may be required to make an Employer Contribution into your plan for 2020.

Q. My TPA previously calculated our 2019 Profit Sharing contribution, but we no longer have sufficient cash flow to make it. What can my plan do now?

A. Since most Profit Sharing contributions are not mandatory, you have several options related to the funding of a 2019 Profit Sharing contribution that is already calculated and not yet deposited/allocated to participants' accounts:

- If you did not yet claim the contribution on your 2019 company tax return, there is no rush to make a decision on whether or not you will make a Profit Sharing contribution for 2019.
- If you already claimed the Profit Sharing contribution on your 2019 company tax return and you have not yet filed it, please contact us or your accountant to learn the implications of not making a 2019 Profit Sharing contribution.
- Check with your accountant regarding whether your tax return has been extended. You have until the due date of your tax return to fund the retirement plan.
- There is the possibility that the IRS will provide relief on funding requirements. We'll keep you apprised of developments.

MATCHING CONTRIBUTIONS

Q. How can we stop or suspend the match contributions we are putting into our plan on behalf of our employees?

A. There are several options, depending on how the match provisions are set up in your plan document.

- Fixed match formula.
  - You may be able to amend your plan to remove or reduce the match amount due for the 2020 plan year.
- Discretionary match provision (no written formula) and an annual or unspecified computation period.
  - You can stop depositing match contributions at any time. At plan year-end, we will help you determine any adjustments on the match amount deposited to ensure it has been allocated per the terms of the plan document.

- Discretionary match provision (no written formula) and a payroll-based computation period.
    - You can amend your plan document to reflect an annual computation period and temporarily stop making the match contributions. At plan year-end, we will help you determine any adjustments on the match amount deposited to ensure it has been allocated per the terms of the plan document.

Important considerations include:

- If your company is temporarily closed and not paying wages, no Employer contributions are due, since there are no wages for employees to defer from, and consequently no deferrals to earn matching contributions on.

CONTRIBUTIONS TO DEFINED BENEFIT AND CASH BALANCE PLANS

Q. Is there any funding relief available for my plan concerning the required contribution into my Cash Balance/Defined Benefit Plan for 2020?

A. The CARES Act includes funding relief in the form of a delay in contribution deadlines for defined benefit and money purchase pension plans. Any contribution due in the 2020 calendar year now has a delayed due date of January 1, 2021. Interest will be due on the delayed contributions from the original due date to the actual payment date.

REQUIRED MINIMUM DISTRIBUTIONS, OTHER WITHDRAWALS, AND LOANS

Q. Is there any funding relief available for my plan concerning the required contribution into my Cash Balance/Defined Benefit Plan for 2020?

A. Yes. The CARES Act includes relief related to RMD payments from qualified Defined Contribution plans; however it does not provide any relief for RMDs from Defined Benefit or Cash Balance Plans.

- Participants who turned age 70½ prior to 2019 will not be required to receive their ongoing RMD for 2020.
- Beneficiary RMDs for beneficiaries receiving life expectancy payments.
- Beneficiaries who have an account balance that is subject to the five-year distribution rule may extend their required distribution by one year (full distribution of the account must be made by the 6th anniversary of the participant's death).

Q. Does the CARES Act provide relief to plans and their participants for withdrawals and loans? What are these provisions – and who is eligible to benefit from them?

A. The CARES Act provides loan and withdrawal relief to qualified individuals who:

- Are diagnosed with COVID-19.
- Have a spouse or dependent who is diagnosed with COVID-19.
- Experience adverse financial consequences as a result of being quarantined, furloughed, laid off, or having work hours reduced.
- Are unable to work because of a lack of child care due to COVID-19.
- Experience the adverse effects of closure or reduced work hours of a business owned or operated by an individual diagnosed with COVID-19.

For such qualified individuals, the CARES Act:

- Waives the additional 10% "early withdrawal penalty" on withdrawals up to $100,000 from a retirement plan or IRA.
- Permits them to pay tax on the income from the distribution spread proportionately over a three-year period.
- Allows them to repay withdrawals tax-free back into their plan over the next three years, if the plan allows for rollovers; these repayments would not be subject to the retirement plan contribution limits. If the plan does not allow rollovers, the withdrawals may be paid into an IRA.
- Doubles the current plan loan limits to the lesser of $100,000 or 100% of the participant's vested account balance, minus the participant's outstanding plan loans (up from ongoing limits of the lesser of $50,000 or 50% of the participant's vested account balance).
- Delays loan payments for up to one year from March 27, 2020 through December 31, 2020.
- BUT SEE THE NEXT FAQ CONCERNING PLAN PROVISIONS TO PERMIT THESE DISTRIBUTIONS AND LOANS.

Q. I know my 401(k) plan participants are having financial difficulties that stem from COVID-19-related issues. As their Employer, how can I help?

A. A couple of possible courses of action are:

- You could amend the plan document to allow for hardship or in-service distributions
- You could allow a loan from the plan, if your plan document permits.

Important considerations include:

- The CARES Act allows you to approve loans and/or coronavirus distributions from your plan, even if the plan document does not currently allow them.

The CARES Act states that you must update your document to permit the changes you elect no later than the last day of the first plan year beginning on or after January 1, 2022 (governmental plans have until 2024 to amend). We are aware of this allowance in the CARES Act and will work with you as needed to amend your plan.

- If your plan allows in-service withdrawals and the participant meets in-service distribution criteria, he or she could apply for an in-service distribution.

Q. How do I handle outstanding participant loans while our business is temporarily closed or while employees are not working for extended periods?

A. If possible, continue to withhold and submit loan payments for participant loans as you have historically. The CARES Act does allow qualified individuals with loan payments due between March 27, 2020 and December 31, 2020 to delay their repayments for up to one year.

Q. If a participant takes a loan now, and then works irregularly, how would that impact their loan payments?

A. We can work with you to determine the first payment date that will work best for you and your employee. Our goal would be to select a payment day within approximately one month of when the loan is processed and set up the payment schedule to match your payroll schedule.

PLAN TERMINATION

Q. When is it appropriate to consider terminating a retirement plan?

A. While a defined contribution (DC) plan can be terminated at any time, the step is a drastic one – and isn't as easy or as cost-effective as you might think.

Here are some important factors to bear in mind if you are considering terminating your DC plan:

- The plan must distribute participant account balances as soon as administratively feasible (usually within one year).
  - In addition to potentially jeopardizing participants' long-term retirement security, distributed money will not share in any gains that would have occurred during a market recovery.
  - Investment manager surrender fees may apply to participant distributions.
- All participant account balances will become immediately 100% vested.
  - This includes any participant that was not fully vested who took a distribution after the termination date. Any such participant will need to be made whole through plan forfeitures (if available) or via a company contribution.

- Contributions will be required for a Safe Harbor 401(k) Plan or plan with a fixed Employer contribution.
- Contributions may be required for a Money Purchase Plan.
- In the case of a plan that includes elective deferrals, the Employer cannot sponsor a plan of the same type until at least 12 months after the assets are distributed from the terminated plan.
- Any outstanding contributions from prior plan years must be made.
- All loans will become due and payable.
    - Participants can pay off loans in their entirety, including interest, by the last day of the quarter following the calendar quarter of the plan termination effective date. If a loan is not paid in full by this date or prior to taking a full distribution of an account, the remaining balance (including any applicable interest) will be defaulted, with the balance being a taxable distribution to the participant.
- A Form 5500 is required for any plan year for which assets remain in the plan. A final Form 5500 is required to be filed within seven months of final distribution of the assets.

There will be plan termination fees, including fees for processing participant distributions and administrative fees for the entire final year.

If your company is temporarily closed and not paying wages, Employer contributions will not be accruing. In other words, your plan may already effectively be "on hold."

- The plan can be formally frozen, which will provide additional time for you to consider the future of your plan. While the plan is frozen, no contributions are made or accrued and no additional employees become eligible for the plan. The plan would have to notify employees.

Leading third-party administrators are responding to COVID-19 by offering valuable guidance and a calming perspective to clients and collaborators. While listening, remaining calm, and communicating are at the top of the list of what is needed, we have heard that evaluations of TPAs and reasons for switching from their incumbent TPA to JK EBG include:

- Insufficient client service model during increased confusion and change.
- Lacking ability to answer myriad of issues being faced.
- Sustainability, operational contingency, and data security.
- Cost and performance for upcoming amendments and restatements.

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