



Can We Allow a Distribution for a Coronavirus-Related Hardship?

Facts

Some of our employees are dealing with financial challenges due to the coronavirus situation, and they are asking whether they can access their 401(k) accounts. Our plan allows for loans and for in-service distributions at age 59 ½, but some of these employees are younger than that. As a plan sponsor, I've always felt strongly that our 401(k) plan was a tool to save for retirement; however, these are unprecedented times, and I'd like to find ways to support my employees' needs.

Question

I heard on the news that the coronavirus relief law that Congress passed makes it easier for employees to access their retirement accounts. Is that true? If so, how can we take advantage of that?

Answer

Yes, the [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#) was signed into law on March 27, 2020, and provides you (and all plan sponsors) the ability to allow participants affected by COVID-19 to access their retirement accounts. Regardless of whether your plan permits in-service or hardship withdrawals, the CARES Act allows you to make withdrawals immediately available to participants. A plan amendment will be required in a few years, but you can allow the distributions now. With that said, we are suggesting that companies at least adopt a resolution now to document their decisions to offer this relief to participants. More on that below.

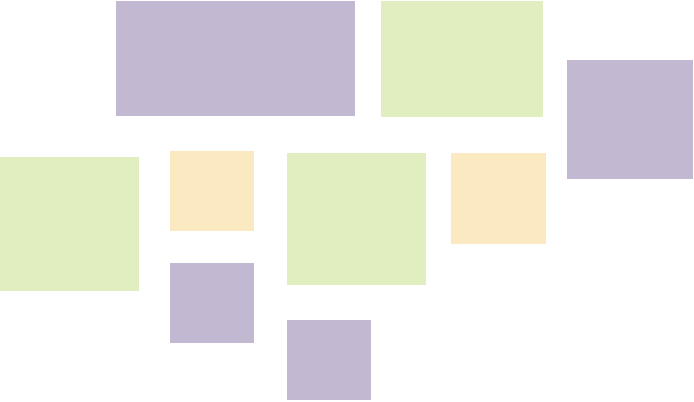
It is important to note that CARES does not remove or otherwise limit the availability of other types of distributions. Those continue to be available, subject to the same rules that have applied in the past. The CARES Act creates a new type of distribution - the Coronavirus-Related Distribution - with a unique set of qualifiers, tax treatment, and rollover options completely separate from the hardship and in-service withdrawals that have long been available.

We'll explore the attributes of this new type of distribution one by one below.

Who's Eligible?

Eligibility is intentionally broad to allow as many people as possible to qualify without having to jump through a bunch of hoops. Plan participants that meet any one of the following requirements are eligible:

- The participant has been diagnosed with the virus;
- The participant's spouse or dependent has been diagnosed;
- The participant is experiencing financial difficulties due to quarantine, lay-off, reduced work hours, or furlough; or
- The participant is unable to work due to lack of childcare related to the virus.



Thankfully, the new law allows you to rely on a participant's self-certification that they meet at least one of these requirements. You don't have to get a doctor's note or anything like that, but there are no details provided about what is sufficient for self-certification. The most conservative approach would be to at least get something in writing from the participant (even if just an email) to document the self-certification in the event anything is questioned down the road.

What's Available?

Beginning January 1, 2020 through December 31, 2020, participants who qualify for a coronavirus-related distribution can take the lesser of 100% of their vested account balance or \$100,000. That means that a qualifying participant can even choose to treat a distribution taken prior to enactment of the new law as a coronavirus-related distribution.

Unlike a hardship distribution, there is no requirement that the amount of this withdrawal be limited to the verifiable amount of the participant's immediate financial need so long as the participant meets the eligibility requirements noted above. There is also no age requirement, and participants can take coronavirus-related distributions whether actively employed, terminated, laid off, or furloughed.

Beyond limiting the timeframe for taking coronavirus-related distributions to calendar year 2020 and capping them at \$100,000 per participant, there is nothing in the law that otherwise limits the frequency, number or amount of distributions a participant can take. You may choose to impose these types of limits within your plan, but availability in general as well as any such limits must be applied on a nondiscriminatory basis.

And Taxes?

The CARES Act provides three types of tax relief with regard to coronavirus-related distributions:

- Waiver of the 10% early withdrawal penalty,
- Waiver of the 20% withholding requirement; and,
- The ability to spread the taxable income over three years.

Although most in-service withdrawals are subject to mandatory federal tax withholding at the time of payment equal to 20% of the total distribution amount, CARES waives that requirement for coronavirus-related distributions. That means the participant gets the entire distribution amount as cash in hand. Also, for those under age 59 ½, a 10% early withdrawal penalty usually applies to all cash distributions, including hardships. That penalty does *not* apply to coronavirus-related distributions.

Moreover, to ease the tax burden related to the distribution, participants may extend tax payments over three years of tax filings (2020, 2021, and 2022) to avoid a single major hit or a bump into the next tax bracket. Participants should work with their individual tax advisors to determine how best to approach this.



What About Repayment?

Another benefit available to participants is the right to pay back the withdrawal within a three-year period. This opportunity allows participants to repay some or all of the withdrawal to any qualified plan or IRA that accepts rollovers as a way to minimize the income tax liability.

This is not a loan, so there is no interest and no periodic payment requirement, and the ability to repay does not require an election at the time of withdrawal. This is completely discretionary for each participant. Repayment can be in a single lump sum or via installments of different amounts at different times, but the repayment window only runs for three years from the date the participant first receives the distribution. In addition, since the payment can be made to any qualified plan or IRA (not just the one from which the distribution was originally paid), a change in employers does not affect the ability to take advantage of this option.

If just the thought of the administrative burdens related to this option makes you cringe, there's relief for you as well. Any coronavirus-related distributions that participants pay back to a plan are treated as rollovers, so you don't have to worry about tracking money types. Additionally, so long as you do not accept more than \$100,000 in repayments from any one participant, there is no further certification or verification required on your part.

When Are Coronavirus-Related Distributions Available?

The technical answer is "immediately!" As in right now even as you read this. The practical answer is "as soon as recordkeepers are able to process them."

As soon as the CARES Act was signed into law, plans were allowed to issue coronavirus-related distributions. Even though plan amendments are not required until 2022 (see below), we recommend that companies wanting to implement coronavirus-related distributions (and/or other CARES Act provisions) at least adopt a resolution to document their decisions.

There is another practical consideration that might cause a slight delay. As with any significant change that potentially impacts so many participants, institutions that process participant distributions must adjust systems and train their personnel to be able to respond appropriately. This may include modifications that "turn off" the mandatory tax withholding or updating plan specifications that limit in-service withdrawals to those of a certain age. Since those safeguards are in place to ensure improper distributions don't sneak through in the course of "normal" business, payment processors need to determine the best way to remove those restrictions without opening things up to mistakes.

What Do We Tell Our Participants?

The CARES Act does not include any special notice requirement, and there is no "model" language provided to use to communicate this to participants. That generally means a "good faith" standard applies. The goal of this legislation is to make relief available to those who need it with as few obstacles as possible, so as long as you communicate availability to your participants in a clear, understandable and nondiscriminatory manner, our sense is that you should be fine. However, each situation is different, so we suggest that you discuss with your plan service providers if you have questions about how and when you should communicate this to your participants.



What About the Plan Document?

Taking into consideration the enormous burdens currently on business owners' plates, it's nice to report that amendments to allow these coronavirus-related distributions are not required until the end of the 2022 plan year. This means you can immediately allow these distributions without worrying about first signing an amendment. As noted above, however, we are suggesting that you at least adopt a resolution now so that you have documentation of which provisions you implemented when 2022 rolls around.

As more guidance is released and new relief made available, we will continue to provide updates and details. In the meantime, we're all learning to navigate this new "normal" together.

If we can assist in preparing a resolution and/or participant communication related to CARES Act relief, please don't hesitate to reach out to [DWC](#) for support and assistance.

For more information on how the coronavirus is impacting company-sponsored retirement plans, please check out our [FAQ](#).

Related Resources

- [Coronavirus: The Impact on Retirement Plans](#)



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