

CARES Act Employee Benefits Questions

- If I'm 64 and want to take a coronavirus related distribution from an IRA. How will recontribution be handled? **Recontributions can be made back into the IRA at any time during the next three years and be treated the same as a 60-day rollover.**
- Is there any way to rectify a 2020 RMD that was already taken in early 2020 for 2020? **As of now, there is no specific relief. However, when 2009 RMDs were waived, the IRS gave people who had already taken RMDs an extended period to roll them over, so we anticipate similar guidance this year as well.**
- Can you still take out up to \$100,000, or is the distribution amount limited to your financial impact? **There is no specific requirement in the Act that coronavirus-related distributions are limited to the actual extent of the person's financial hardship. Based on similar prior legislation, we expect that the amount will *not* be capped based on actual financial need. In other words, anyone meeting the conditions of being affected by COVID-19 can treat up to \$100,000 as a coronavirus-related distribution, even if they don't incur \$100,000 worth of financial hardship.**
- Is the distribution taxed over 3 years based on 2020 taxes or the tax rate of the 3 years in which you pay? **The income is included evenly over three years, so each of the three years would be based on the participant's tax rate for the year in which that one-third of the total amount is included.**
- So if you pay the distribution back within 3 years you don't get taxed? **The amount recontributed within three years is treated like a rollover, so it is not taxed. If the participant has already paid some of the tax, assuming this situation is treated like prior disaster legislation, the IRS will provide forms for the individual to file reconciling the taxes owed vs. amounts recontributed over the next three years.**
- Can one withdraw without penalty to make a charitable contribution? And if so is it taxed? **Assuming this is referring to qualified charitable distributions ("QCDs") made directly from IRAs, those rules were not changed. QCDs may still be made in 2020. The distribution technically would not be a *required* minimum distribution, but an IRA holder can still make a non-RMD QCD under the normal QCD rules as long as the IRA holder is at least age 70.5. (While they are typically used to offset RMDs, a QCD is not *limited* to RMDs. All they require is that the IRA holder be at least 70.5.) The QCD taken in 2020 would not offset any future RMDs.**
- Can a distribution be from a 403(b) plan? **Yes.**
- Why would an employer not want to allow these distributions in their plan for their participants? **Mostly administrative reasons or preference—additional recordkeeping, reporting, forms, administration, plan amendments, desire to preserve employer-provided retirement funds for the employee's retirement, etc.**

- Does this 2020 RMD waiver also apply outside an Employer 401(k), for example to individual IRAs? **Yes, the 2020 RMD waiver applies to individual IRAs as well.**
- Do you have to formally amend a 401(k) plan to allow these distributions? **Yes, but not until 2022. The plan may operate now by allowing the new distributions, then make the formal plan amendment later.**
- Does this apply to SIMPLE IRAs? **The RMD waiver and distribution provisions apply to SIMPLE IRAs. Loans are not permitted from SIMPLE IRAs.**
- What happens with a 3 percent match for a SIMPLE IRA or SEP IRA? Can we forgo employer match? **For a SIMPLE IRA, there is no mechanism to stop or reduce employer contributions or matching contributions during a year. For a SEP, generally there is no requirement to make a contribution in any given year, so sponsors may elect not to make a contribution (or make a small contribution) for 2020.**
- On the topic of automatic vesting when either vertical or horizontal partial plan terminations - is there any relief on this or the 20% general threshold? **There is not any official relief as of now. Assuming 80% or more of the plan sponsor's same workforce returns to work by the end of the year, arguably there has not been the requisite turnover, but as of now there is no formal relief. Ultimately the determination of a partial termination is based on the facts and circumstances, and the 20% turnover rule only creates a rebuttable presumption of a partial termination. An employer may argue that the facts and circumstances (for example, all employees rehired within 60 days) rebut the presumption.**
- Are loan changes to retirement plan provisions also optional? **As of now, it appears the new increased loan limits are optional. The CARES Act only increases the maximum amount permitted by law; it does not require plans to offer loans or increase any lower limit imposed by the plan terms. The loan repayment extension is less clear; prior legislation using the same language resulted in IRS guidance saying the repayment extension was optional, but there has been no formal IRS clarification on the CARES Act yet.**
- Is the waiver of RMDs mandatory? **We anticipate guidance much like the 2009 RMD waiver where plan sponsors were given several options on how to apply the waiver provisions. If the plan continues to require distributions in the same amount as the RMD would have been, it won't technically be an RMD, but the participant may still need to take a distribution if the terms of the plan require. Some of this will depend on the terms of the existing plan and how the plan describes RMD payments. There is no formal IRS clarification on the CARES Act 2020 RMD waiver. Regardless, no distribution made during 2020 will be a *required* minimum distribution.**
- Please differentiate which retirement plan items are voluntary for the plan sponsor. **As of now, a plan does not *have* to allow coronavirus-related distributions as a new distributable event, although a participant can still choose to treat a distribution they receive as a coronavirus-related distribution if they meet the other conditions (affected by virus, etc.). So, for example, a 401(k) plan sponsor would not have to allow an active employee to take**

a distribution (even if he/she meets the Act's conditions) unless the employee had a distributable event already (in-service distribution at age 59.5; hardship; termination of employment; etc.). In other words, the sponsor does not have to *add* a new distributable event to the plan where none exists. As noted above, the new maximum plan loan limit is optional, but the loan suspension is unclear. The IRS may allow alternatives for the 2020 RMD waiver like it did with the 2009 RMD waivers, but as now no 2020 distribution will be an RMD.

- Will there be a new code on the 1099-R to report these distributions? *We don't think it's likely. In prior similar situations, these types of distributions varied between Code 1 and Code 2. There is no clear answer yet.*
- I see health savings accounts can be used to buy over-the-counter medications. Does this also include medical FSAs? *Yes.*
- If an employee has to be furloughed because not enough work but with the goal of rehiring as soon as the work is available, does the employer keep paying their insurance or offer them COBRA? *This depends on the exact actions taken by the employer and, maybe more importantly, the health insurer's requirements. If the employee has been furloughed (still considered an active employee, just not physically working at the moment) the employee is probably still considered active for health insurance coverage. Many insurers have been waiving the requirement that employees be "actively at work" for a certain number of hours per week. If this is the case, the employee should stay on active coverage. If the insurer has not waived the typical "actively at work" requirement, the employee may lose coverage. If the employee loses coverage due to a reduction in hours, they become eligible for COBRA. If the employee has been truly terminated from employment (no longer considered an employee at all, and would have to be rehired as a new employee once work picks back up), their coverage will probably end and they will need to get COBRA notices and go on COBRA. Check with your broker and insurer as these situations are very individualized.*