

# Employee Benefits / ERISA

## Employee Benefits/ERISA: COVID-19 Frequently Asked Questions

### FAQs About Your 401(k) Plan

**Q: Has the CARES Act changed the rules governing a participant's access to funds in their 401(k)?**

A: Yes, Section 2202 of the Coronavirus Aid, Relief and Economic Security ("CARES") Act<sup>1</sup> temporarily eases the limitations on loans and distributions from 401(k) retirement funds<sup>2</sup>, and temporarily relaxes the rules regarding repayment of existing loans. Not every participant is eligible for this relief, however. There must be a coronavirus-related reason for seeking the loan, distribution, or deferred repaying of existing loans.

**Q: Are employers required to make these changes?**

A: It is optional for employers to implement the provisions in Section 2202 of the CARES Act. However, any opt out period was likely very brief, as many plan recordkeepers have already begun changing their software programs to account for Section 2202 of the Act. It is important for employers just learning about this provision to immediately determine if they have opted into Section 2202 through inaction, and if so, to ensure they comply with the requirements. It is important for employees who would like to know if you can take a coronavirus-related loan or distribution or defer payment on an existing loan for a coronavirus-related reason to ask the

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<sup>1</sup> The CARES Act was signed into law by President Trump on March 27, 2020. The full text of the CARES Act can be found at <https://www.govinfo.gov/content/pkg/BILLS-116hr748enr/pdf/BILLS-116hr748enr.pdf>.

<sup>2</sup> Eligible retirement plans include more than just 401(k) plans; they also include IRA, tax-qualified retirement plans, tax-deferred annuities 403(b) plans and governmental sponsored deferred compensation plans. 26 U.S.C.A. § 402 (West)

person or department designated by your organization to handle 401(k)-related questions whether or not your company has opted in to this section of the CARES Act.

**Q: Are participants who are impacted by coronavirus able to obtain distributions from their retirement funds?**

A: Yes, if the plan allows it, participants may withdraw, penalty free, up to \$100,000 between the date the CARES Act became effective (March 27, 2020) through Dec. 31, 2020 in “coronavirus-related distributions” (“CRD”). This is double the usual limit allowed in any calendar year and can be taken as a loan or as a hardship distribution.

**Q: What are the eligibility requirements to access this increased benefit?**

A: Eligibility requirements are very broad so that as many people as possible qualify without needing to engage in a lot of administrative red tape. [If you are a plan participant that meets any of these requirements, you are eligible to benefit under Section 2202 of the Cares Act:](#)

- You, the participant, has been diagnosed with COVID-19
- You, the participant, has a spouse or a dependent who has been diagnosed with COVID-19
- You are experiencing financial hardship as a result of being laid off, furloughed, having your work hours reduced, or because of quarantine
- You are unable to work because you have no available childcare due to coronavirus-related closures

The CARES Act allows retirement plan administrators to rely on the word of plan participant that they meet at least one of the above requirements. There is no need to request a doctor’s note or any additional documentation if a participant seeks a CRD, but it never hurts to request the participant certify in writing, even by email, that the CRD results from one of the above four areas, just in case anything is questioned in the future.

**Q: Have the loan limits for plan participants been adjusted?**

A: If your plan allows it, then yes, just like for distributions, the loan limit can be increased to \$100,000 or up to 100% of the participant’s vested account balance if it is less than \$100,000, but only for loans made on or before Sept. 23, 2020 for participants seeking a CRD. [Loans from qualified retirement accounts are governed by Section 2202\(b\) of the CARES Act](#) (distributions are governed by section 2202(a). Like for distributions, employer participating in these increased loan limits is optional, so the first step for participants seeking a CRD in the form of a loan is to check and see if your employer has opted in to these provisions of the CARES Act.

**Q: What about outstanding loans?**

A: If your plan allows it, loan repayments from plan participants which are due from March 27, 2020 (the date the CARES Act became effective) through Dec. 31, 2020, can be delayed by qualified employees for up to a year, although interest will continue to accrue during that time. The plan can also extend the terms of the deferred loan for a year. Qualified employees are those who fit any of the criteria for which a CRD can be sought.

**Q: Can a participant who receives CRD repay the amount into a qualified retirement plan?**

A: Yes! A participant has three years from the day after the CRD was received to repay the amount that was borrowed into a qualified retirement plan capable of accepting rollovers. There is still some uncertainty about the tax impacts of repaying a CRD, although if the participant opts not to pay the CRD back, the income tax on the CRD can also be spread over a three-year period.

**Q: If the distribution is not repaid, does the 10% penalty apply?**

A: The CRD is considered a hardship withdrawal, and the 10% penalty normally assessed for early distributions is waived if the CRD is not repaid.

**Q: Do retirees have to take the required minimum distribution (RMD) this year?**

A: For the remainder of 2020, the CARES Act suspends the required minimum distributions (RMDs) that participants are usually required to take from tax-deferred 401(k)s and IRAs starting at either age 70 1/2 or 72. This is to protect workers who would otherwise be required to withdraw funds from their retirement accounts during this period of stock market decline. Unlike the other provisions related to retirement plans in the CARES Act, the suspension of RMD for 2020 applies to all qualified retirement plan participants, whether they fit the criteria for obtaining a CRD or not.

**FAQs About Your Employer-Sponsored/Union Provided Health Plan**

**Q: Are there costs associated with testing for COVID-19?**

A: No, coronavirus testing (***covered without cost-sharing and outside the deductible by fully insured and self-insured plans***), is required under the CARES Act, and expansion of free testing under insurance policies mandated in the Families First Coronavirus Response Act (“FFCRA”). The expanded coverage in the CARES Act requires that all insured people are fully covered for all services performed during a medical visit and for any products provided at the visit which relate to or results in coronavirus testing. This coverage applies whether you make an in-office visits to your primary care provider, as well as to telehealth visits, urgent care visits

and emergency room visits. This expanded coverage only applies while there is a declared public health emergency.

**Q: Are there any changes to group health plans for treatment for COVID-19?**

A: On March 11, 2020, [the IRS issued a notice](#) to advise that the providers of high deductible health plans (HDHPs) would be permitted to pay for COVID-19-related testing and treatment before the deductibles are met without jeopardizing their status as HDHPs. It is important to be aware that the notice does not require HDHPs to do this, it just authorizes those who wish to do so, so plan participants wondering about coverage for COVID-19 testing and related services should check with their benefits manager or their health insurance company to determine if this exception applies to their HDHP.

Employers/plan providers: note that this “safe harbor” provision applies to the 2020 and 2021 plan years and requires plan document/summary plan description (SPD) amendments and carrier contract updates.

**Q: Are there any changes for how the funds in health savings accounts (HSAs)/Flexible Spending Accounts (FSAs), Archer Medical Savings Accounts (AMSAs) and other health reimbursement arrangements can be used?**

A: HSAs, FSAs, AMSAs, and other health reimbursement arrangements once again cover the purchase of some over-the-counter medical products. This includes products that are needed for social distancing and for quarantine, and no prescription is required. This applies to purchases or expenses starting Jan. 1, 2020.

HSAs, FSAs, AMSAs, and other health reimbursement arrangements are also now allowed to be used to pay for menstrual care products like tampons and pads. Beginning Jan. 1, 2020, these items will be treated as qualified medical expenses. HSAs, FSAs, AMSAs, and other health reimbursement arrangements can be used to pay for telehealth visits.

**Additional Resources**

- **CDC Coronavirus Resources:** <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>
- **EBSA FAQs About Coronavirus:** <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-42.pdf>