Management Alert

IRS and DOL Provide Relief for Plan Sponsors and Participants Affected by Hurricane Harvey

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The Internal Revenue Service (IRS) and Department of Labor (DOL) issued temporary relief on deadlines and procedural requirements applicable to employee benefit plans for employers impacted by Hurricane Harvey.

On Wednesday, August 30, 2017, the IRS issued Announcement 2017-11, which provides easier access to 401(k), 403(b) and 457(b) funds for individuals affected by Hurricane Harvey. For a list of locations, click here. On the same day, the Department of Labor (DOL) issued a news release giving relief to the timing rules for depositing participant contributions and loan repayments, and the requirement to issue blackout notices in the event investment trading in retirement plans was or is interrupted by Hurricane Harvey.

The IRS also issued a news release giving extensions for various tax filing deadlines. Included among the relief is an extension until January 31, 2018 to file Forms 5500 that are due between August 23, 2017 and January 31, 2018.

Loan and Hardship Withdrawal Relief

Under IRS rules, employees have access to their funds in employer retirement plans only upon the occurrence of certain events, such as termination of employment, disability or hardship. The distributions and withdrawals pursuant to these events are further governed by IRS rules and limitations. Wednesday's announcement eases some of these limitations for participants affected by Hurricane Harvey. Following is a summary of the normal rules, the relief afforded by the Announcement and the required follow-up steps.

Normal Rule	Immediate Relief	Follow-Up Steps
The plan must contain language allowing loans and hardship withdrawals before they can be made.	Plans that do not contain such language may nonetheless grant loans and/or hardship withdrawals between August 23, 2017 and January 31, 2018.	Plan language allowing the loans and/or hardship withdrawals must be added by the end of the first plan year beginning after December 31, 2017. The deadline for calendar year plans is December 31, 2018.

Normal Rule	Immediate Relief	Follow-Up Steps
Plans generally require documentation of the hardship before allowing a hardship withdrawal. Plans also might have other processes and procedures; for example, a plan requiring spousal consent to a loan or distribution may require a death certificate if the participant claims his/her spouse is deceased.	The plan administrator can grant the loan or hardship withdrawal before the normal documentation and procedural requirements are satisfied. However, normal spousal consent rules continue to apply (unless the participant claims that his or her spouse is deceased, it is reasonable to belief that is the case, and the plan administrator makes reasonable efforts to obtain the death certificate as soon as practicable).	The plan administrator must make a good faith effort to comply with the plan's requirements and collect supporting documentation from the participant as soon as practicable. Hardship withdrawals made pursuant to the Announcement are still taxable (except to the extent they consist of after-tax contributions) and subject to the 10% penalty if made before age 59½.
Employees generally cannot contribute to the plan for six (6) months after receipt of the hardship withdrawal.	The 6-month suspension is not required.	None

The relief described in the Announcement can be extended to a participant even if he/she is a former employee. Withdrawals can be made not only for the participant's hardship, but for that of his/her lineal ascendant or descendant, or spouse or other dependent with a principal residence or place of employment in one of the covered disaster areas.

Contribution/Loan Repayment Timing and Blackout Relief

The DOL also issued relief with respect to deadlines for remitting retirement plan contributions to the plan and issuing blackout notices.

Normal Rule	Immediate Relief	Follow-Up Steps
When an employee contributes to a defined contribution plan (or makes a loan payment) out of his/her paycheck, the employer must remit the contribution (or loan payment) to the plan as soon as the funds can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month after the month in which they were withheld by the employer.	The DOL will not allege a violation if the remittance is delayed solely due to Hurricane Harvey, provided the employer and its service providers act prudently to remit the contributions as soon as practicable under the circumstances.	Employers should remit participants' contributions and loan repayments to the plan as soon as practicable under the circumstances.
The plan administrator must notify participants 30 days in advance if participants will be temporarily unable to obtain a loan or distribution or trade in their retirement accounts for more than three (3) business days (referred to as a blackout period),	The DOL will not allege a violation for failure to give notice of blackout periods related to Hurricane Harvey.	Consider issuing a notice if the blackout period is going to continue for a period after the date it is practicable for the employer to give notice.

Guidance for Group Health Plans

The DOL acknowledged that deadlines under group health plans might be missed due to Hurricane Harvey, such as the deadline to issue a COBRA notice or make a COBRA election, or the deadline to file a benefit claim. The DOL's guidance encourages employers to make reasonable accommodations for employees to prevent the loss of benefits, and notes that it will give grace periods where appropriate when compliance with the plan's pre-established time frames under the plan's normal claim and appeal procedures is not possible due to Hurricane Harvey.

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