

FOR YOUR BENEFIT

NEWSLETTER, FEBRUARY 2019

NEW 401(K) PLAN HARDSHIP DISTRIBUTION RULES

The Internal Revenue Service (IRS) issued Proposed Regulations which impact hardship distributions from Section 401(k) plans. The new Regulations incorporate legislative changes affecting Section 401(k) plans, including the 2017 and 2018 tax acts.

Six-Month Deferral Suspension

Prior to adoption of the Proposed Regulations, a plan that relies on the IRS' regulatory safe harbor for hardship distributions was required to suspend participants from making deferral contributions to the plan for six months following a hardship withdrawal. During 2019, a plan may eliminate this rule, and beginning in 2020, the suspension must be eliminated.

Expanded Sources for Hardship Distributions

Starting in 2019, a plan may, but is not required to, permit hardship distributions from salary deferrals, Qualified Non-Elective Contributions (QNECs), Qualified Matching Contributions (QMACs) and earnings on these amounts.

Loan Exhaustion Requirement

Starting in 2019, a plan is no longer required to provide that a participant must exhaust all taxable plan loans prior to taking a hardship distribution.

What Actions Must 401(k) Plan Sponsors Take?

To the extent you have not discussed hardship withdrawal administration with your plan's administrator or recordkeeper, contact your vendor to determine what changes the vendor will require in 2019 and what changes are available. A plan amendment must be adopted by the end of 2019 to document any changes to the administration and to implement the required changes for 2020.

FORM 1095 DEADLINES

Under the Affordable Care Act (ACA), applicable large employers (generally a company that had at least 50 full-time employees in the previous year) must furnish each individual who was a full-time employee during 2018 with a Form

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1095-C, Employer-Provided Health Insurance Offer and Coverage. The deadline for furnishing these statements to full-time employees to report coverage was originally Jan. 31, 2019. In Notice 2018-94, the Internal Revenue Service (IRS) extended that deadline by 30 days until March 4, 2019.

In addition, applicable large employers must also file a Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS to report the same information provided to full-time employees on Form 1095-C. The deadline for filing these statements with the IRS has not been extended. The deadline is Feb. 28, 2019, if not filing electronically, or April 1, 2019, if filing electronically.

Form	Recipient	Original Due Date	Extended Due Date
2018 Form 1095-C	Employees	Jan. 31, 2019	March 4, 2019
2018 Form 1094-C and 1095-C, if not filing electronically	IRS	Feb. 28, 2019	None
2086 Form 1094-C and 1095-C, if filing electronically	IRS	April 1, 2019	None

In this guidance, the IRS also extended its “good faith” transition relief from penalties associated with incorrect or incomplete information reported on returns to individuals and filing of these returns with the IRS. For 2018 returns, there will be no penalties if the employer makes a “good faith” effort to comply. Please note that the relief applies only to incorrect or incomplete information, not the failure to timely furnish or file the returns, although the IRS may waive late filing penalties if the failure is due to “reasonable cause.”



APPLYING FOR THE 2018 TAX CREDIT FOR PAID FAMILY AND MEDICAL LEAVE

The IRS issued the 2019 Form 8994, which may be used to calculate an employer's 2018 tax credit for providing paid family and medical leave. The tax form requires an employer to certify that at least two weeks of annual paid family and medical leave providing at least 50 percent of normal wages to qualifying employees was provided under a written policy.

The paid leave must be specifically designated for one or more purposes under the Family and Medical Leave Act of 1993 (FMLA) and not used for any other reason. Paid leave provided under an employer's short-term disability program may also be characterized as paid leave for purposes of the credit.

For 2018, qualifying employees are those who are employed for a year or more and were paid \$72,000 or less during 2017. Employers must provide at least two weeks of annual paid leave for each full-time qualifying employee, and at least a proportionate amount of paid leave for each part-time qualifying employee. A part-time employee is one who is customarily employed for fewer than 30 hours per week.

The policy must provide for payment of at least 50 percent of the qualifying employee's wages while the employee is on paid leave. Wages include all remuneration from employment, excluding overtime (other than regularly scheduled overtime) and discretionary bonuses.

The credit equals the applicable percentage of the amount of wages paid to qualifying employees while they are on paid leave (up to 12 weeks). The base applicable percentage is 12.5 percent if the rate of payment is 50 percent, and is increased by 0.25 percent for each percentage point by which the rate of payment exceeds 50 percent, up to a maximum applicable percentage of 25 percent. An employer's deduction for wages paid will be reduced by an amount equal to the amount of the employer credit.

If you are interested in learning whether your organization's paid leave program can qualify for this tax credit, please contact us.

SPECIAL TAX RELIEF FOR LEAVE-BASED DONATION PROGRAMS

In November, the IRS announced the favorable tax treatment of amounts paid by employers under leave-based donation programs to help the victims of Hurricane Michael.

Under leave-based donation programs, employees may choose to forgo their vacation, sick or personal leave in exchange for cash payments made by the employers to eligible charitable organizations. Generally, leave-based donations are includible in the donating employees' gross income. The guidance provides a special relief from the general rule by stating that cash payments made by employers in exchange for the foregone vacation, sick or personal leave will not be included in gross income of the employees. To be eligible, the payments must be made to Code Section 170(c) organizations for the relief of Hurricane Michael victims before Jan. 1, 2020.

In addition, although the employees may not claim a charitable contribution deduction on their tax returns with respect to the value of forgone leave, the opportunity to make leave-based donations will not result in constructive receipt of gross income for employees.

The good news for employers is they are now permitted to deduct such contributions as trade or business expenses without being subject to the Code Section 170(c) charitable contribution limitations.

If you have adopted or are considering adopting leave-based donation programs to aid victims of Hurricane Michael, we are available to answer any questions you may have, including program design, compliance with the law and associated tax consequences.