



FAQS REGARDING HARDSHIP DISTRIBUTIONS

Under what circumstances can a participant get a hardship distribution from a retirement plan?

A retirement plan may, but is not required to, provide for hardship distributions. If a 401k plan provides for hardship distributions, it must provide the specific criteria used to make the determination of hardship. Thus, for example, a plan may provide that a distribution can be made only for medical or funeral expenses, but not for the purchase of a principal residence or for payment of tuition and education expenses.

What is the IRS definition of hardship for a 401k plan?

For a distribution from a 401k plan to be on account of hardship, it must be made on account of an immediate and heavy financial need of the employee and the amount must be necessary to satisfy the financial need.

Whether a need is immediate and heavy depends on the facts and circumstances. Certain expenses are deemed to be immediate and heavy, including (1) certain medical expenses; (2) costs relating to the purchase of a principal residence; (3) tuition and related educational fees and expenses; (4) payments necessary to prevent eviction from, or foreclosure on, a principal residence; (5) burial or funeral expenses; and (6) certain expenses for the repair or damage to the employee's principal residence.

A distribution is not considered necessary to satisfy an immediate and heavy financial need of an employee if the employee has other resources available to meet the need, including assets of the employee's spouse and minor children. Whether other resources are available is determined based on facts and circumstances.

A distribution is deemed necessary to satisfy an immediate and heavy financial need of an employee if (1) the employee has obtained all other currently available distributions and loans under the plan; and (2) the employee is prohibited under the terms of the plan from making elective contributions to the plan for at least 6 months after receipt of the hardship distribution.

A hardship distribution may not exceed the amount of the employee's need. However, the amount required to satisfy the financial need may include amounts necessary to pay any taxes or penalties that may result from the distribution.

What is the maximum amount of elective contributions that can be distributed as a hardship distribution from a 401k plan?

The amount of elective contributions available for a hardship distribution cannot be more than the amount of the employee's total elective contributions, including designated Roth contributions, as of the date of distribution reduced by the amount of previous distributions of elective contributions. This "maximum distributable amount" generally does not include earnings, qualified non-elective contributions or qualified matching contributions.

This information is not intended to be a substitute for specific individualized tax advice. We suggest that you discuss your specific tax issues with a qualified tax advisor.

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