

PRACTICAL MATTERS: FAQs FOR PLAN SPONSORS AND EMPLOYEES ON CARES ACT RELIEF

The Coronavirus Aid, Relief and Economic Security (CARES) Act was a rapid response by the federal government to help businesses and employees cope with the economic issues caused by the pandemic. Many aspects of the wide-range law make significant changes affecting employer-sponsored retirement plans and their participants.

Since Congress passed the CARES Act in March 2020, plan sponsors have asked numerous questions about the law's impact on plans and participants. Below is a list of some of the most common questions plan sponsors face, along with our brief answers.

1. Did COVID-19 furloughs create partial plan terminations?

If an employer furloughed a significant portion of its workforce because of COVID-19 or the resulting economic downturn, it is possible that those furloughs triggered a partial plan termination. A partial plan termination happens generally when 20% or more of participants terminate employment without full vesting during a particular year. Partial terminations can occur in connection with a significant corporate event such as a plant closing, or as a result of general employee turnover due to adverse economic conditions or other reasons that are not within the employer's control. A furlough is an involuntary, unpaid temporary leave, but the individual is still considered an employee. A furloughed employee would generally not be considered in the calculation for a partial plan termination as long as the employee returns to work within the plan year. Determining whether a partial plan termination occurred requires plan sponsors to calculate the turnover rate as well as take a careful look at the facts and circumstances surrounding the action(s). There is no one perfect formula that fits all situations.

Plan sponsors now have until March 31, 2021 to return the size of their workforces to a level that would avoid a partial plan termination.

2. If yes, do plans sponsors have to vest everyone or just the furloughed workers?

When a partial plan termination does occur, affected employees (i.e., those who have been terminated) automatically become 100% vested in all employer contributions, including matching contributions. Please visit our plan termination article for more information.

3. When do plan sponsors apply the partial termination rules?

The applicable period depends upon the plan's circumstances, but it usually takes place during a specific plan year; the timeframe may be extended to more than one plan year if there are multiple, related severance events. See the Internal Revenue Service's (IRS) [issue snapshot](#) on partial plan terminations.

4. Are sick leave and family leave payments that are mandated by the Families First Coronavirus Response Act (FFCRA) treated as plan compensation?

Probably yes, since FFCRA paid time off would be included in Box 1 of Form W-2 and many retirement plans define “compensation” as including Box 1, W-2 compensation. But plan sponsors will need to look at how their plan defines “compensation.” If paid time off is excluded, then FFCRA paid time off would likewise be excluded (but such exclusion seems to be rare).

5. Why are auditors asking plan sponsors to document their Going Concern positions in a memo?

Many plan sponsors are unsure of their ability to fund Employer contributions to their plans and have made changes to plans as a result of the pandemic. As outlined in FASB ASU 2014-15, the responsibility for performing the annual going-concern assessment is placed on management. It is critical for management to prepare this analysis for their financial statements, including a memo on their considerations. The memo helps auditors evaluate whether there is substantial doubt about the plan’s ability to continue as a going concern. This formerly was the auditor’s responsibility, but in the past five years, this has shifted and is now a standard duty of the plan sponsor.

6. What are the most commonly adopted provisions from the CARES Act?

According to [research from Plan Sponsor Council of America](#), 46% of surveyed plans have elected to allow repayment of coronavirus-related distributions during the next three years, followed closely by 45% allowing some distributions until December 31, 2020. Only 9% of those surveyed adopted or plan to adopt no provisions.

7. What is the difference between “temporary impairment” and “other than temporary impairment”?

These are accounting principles used to describe the nature of the decrease in an asset’s value, which is a standard topic that needs explanation in the plan’s audit. “Temporary impairment” refers to normal market fluctuations in a specific investment; “other than temporary impairment” refers to a permanent decline in the investment with little to no chance of recovery. Given the extraordinary nature of the COVID-19 pandemic and its varying economic impact across industries and businesses, it is important to work with auditors to determine the correct classification of losses.

8. How can plan sponsors change the timing and frequency of the employer matching contribution from each pay cycle to a year-end contribution?

There are IRS and plan document limitations related to changes in certain types of Employer contributions, such as Safe Harbor contributions. However, generally a sponsor can more easily change the timing of the deposit of those contributions into the plan, rather than change the formula and eligibility provisions of the Employer contribution. When cashflow is tight, consider funding the contribution on an annual, quarterly, monthly, or per payroll period basis to fit your needs. Employers generally have until the extended due date of their federal income tax return for that tax year to deposit Employer contributions into the retirement plan. Plan sponsors should check their plan documents (and

summary plan description) to see if an amendment is needed to change the timing of when Employer contributions are made to the plan.

9. Do plan sponsors have to implement the CARES Act provisions for the new distribution and loan options?

The CARES Act expanded current rules on coronavirus-related distributions and loans, increasing the amount affected participants can pull from their accounts as well as the time they can take to repay the money, if applicable to the transaction. It's important for plan sponsors to understand that the distribution and loan provisions are optional, as outlined in IRS Notice [2020-50](#). Plan sponsors should be aware that they may choose amongst the provisions and adopt the ones that they feel their participants would benefit from the most.

10. If plan sponsors implement a change to their plan allowed by the CARES Act, when should the plan document be amended to reflect the change?

Plan sponsors are permitted to make the CARES Act options available immediately even before a written amendment is made to the plan document. The deadline to formally adopt the amendments has been extended to December 31, 2022 (for calendar years) or the end of the plan year starting in 2022 (for non-calendar years).

11. Can plan sponsors stop making employer contributions?

In general, plans can reduce or eliminate discretionary non-elective and discretionary matching contributions without needing to amend plan documents, but plan sponsors need to examine plan documents to make this decision. Note that plans operating as Safe Harbor plans face a different set of requirements.

12. Can participants still take a Required Minimum Distribution (RMD) even though RMDs were waived for 2020?

Yes, but only if the plan allows withdrawals. The CARES Act allows participants to waive the RMD for 2020, but the law does not prohibit participants from taking a withdrawal. First, check the plan document to see whether withdrawals are allowed; then, see whether the plan has relaxed withdrawal rules as a result of the CARES Act to determine maximum amounts.