March 27, 2020

Dear Valued Client,

We acknowledge that many of our clients may be anticipating temporary COVID-19 related closures and many others are simply unnerved by the current uncertainty. Our intention with this FAQ related to the operation of your retirement plan is to provide you with information that may be helpful during these uncertain times.

Please contact us if we can be of help to you in any way as you consider this information. We will update you if additional plan-related guidance is received as a result of this national emergency.

CONTRIBUTIONS

1. **Can the 2020 required Safe Harbor Contribution be discontinued?:**

   It is possible to remove a safe harbor contribution provision from your plan mid-year. Making this change will subject your plan to nondiscrimination testing and may result in refunds of excess contributions to your Highly Compensated Employees (in 2021). The amendment to your plan would not be effective until at least 30 days after the participants have been notified of the discontinuance of the safe harbor provision. Depending on your situation, this may or may not successfully limit your employer funding obligation for 2020. Please contact us to discuss your options if you would like to consider this change.

2. **When are your 2019 Employer Contributions required to be funded?:**

   If you have not funded your 2019 Employer Contribution, you have until the deadline (including extensions) of your company tax return to fund. If the only Contribution is a 'safe harbor' contribution, it may be possible to delay funding until December 31, 2020. The Contribution would not be deductible until 2020 if funded after the 2019 tax return deadline.

3. **Can the Matching and or Profit Sharing Contribution for 2020 be suspended?:**

   Generally the matching (not the safe harbor match) and profit sharing contributions are discretionary and under the Plan Document are not required to be made. You should simply adopt a resolution indicating the intention to suspend or cease the contributions as well as communicate that fact to participants.

4. **Can employees change the amount they are saving or stop the amount they are saving in the 401(k) Plan?:**

   Your Plan Document allows Participants to stop their deferrals at any time. Participants are permitted to change the amount they are saving based on the specific provisions in your Plan Document.

DISTRIBUTIONS

5. **Can Participants take distributions while still employed?:**

   An in-service distribution is a distribution from the plan while you are still employed. Your Plan Document may allow for distribution of profit sharing, discretionary match, safe harbor and Employee 401k salary deferral money upon attainment of age 59 ½. Rollover accounts can be distributed in accordance with provisions in the Plan Document. This withdrawal may be all or a portion of your account and can be taken for any reason. These distributions represent taxable income and are subject to the mandatory withholding rules.

6. **Can Participants receive a distribution of their account for a Hardships?:**

   Plans can allow for withdrawals in the event of financial hardship. Participants can qualify for a hardship withdrawal if they can demonstrate immediate and heavy financial need (limited to the amount necessary to satisfy that financial need) for the payment of qualifying expenses associated with:

   - Medical care
   - Preventing foreclosure or eviction
   - Funeral or burial expenses for deceased parent, spouse, children or other dependents
   - Tuition and related educational fees for participants, their spouse or children
   - Purchase of primary residence (excluding mortgage payments)
   - Catastrophic damage repair of a participant's principal residence
   - Disaster losses

   Plans can allow for hardship withdrawals from pre-tax and Roth deferral accounts as well as other money type account balances as specified in the Plan document which can include employer non-elective contributions (profit-sharing contributions), regular matching contributions as well as safe-harbor contribution money types.

   These distributions represent taxable income and the 10% excise tax on distributions to participants under age 59 ½ applies.

   Plans that do not currently allow for hardship withdrawals can add those provisions via a Plan amendment.

7. **Can Participants take loans from their account?**:

   If your plan provides for loans, Participants may borrow up to 50% of their vested account balances (not to exceed $50,000). Generally, loans may be repaid over a 5 year period and loan payments are withheld each payroll period.

   Plans that do not currently allow for loans can add this provision via a Plan amendment.

LAYOFFS/FURLOUGHS

8. **When are Participants eligible to receive a distribution?:**

   A layoff is a separation from service without a guarantee of returning to work. Participants who are laid off therefore would be able to receive a distribution of the vested balance of their plan account.

   A furlough is a temporary reduction or elimination of work hours like a Leave of Absence. Furloughed employees are not entitled to a distribution from their plan account.

9. **What happens to Participant Loans after a layoff or furlough?**;

   Participants who are laid off will likely need to repay the entire loan balance to avoid default.

   Most loan policies allow for the suspension of loan repayments for up to 12 months for participants on an employer approved leave of absence which would include a furlough. Upon return to work the participant would need to make up for any missed repayments and additional accrued interest by increasing the repayments over the remaining term of the loan or by making a balloon payment at the conclusion of the original loan term. If the original term of the loan ends during the 12-month suspension, the loan becomes due and payable on the original maturity date.

10. **Can a layoff create a Partial Plan Termination?:**

    If layoffs affect more than 20% of your work force (who are eligible for the Plan) in a given year, the plan may have incurred a Partial Plan Termination. If a partial termination has occurred, those affected employees would become 100% vested in their employer contributions regardless of their years of service. This should be kept in mind as these laid off employees are paid out. Forfeited money may need to be returned to these participants if enough employees end up being terminated for the plan to have a partial plan termination.

PROVISIONS IN ECONOMIC STIMULUS RELIEF:

11. What are the new provisions under the "CARES Act"?:

- A "coronavirus-related distribution," up to $100,000, exempt from the 10% early withdrawal penalty and mandatory 20% federal withholding, with permissible repayment.

- Loan relief via increased available loan amounts (up to 100% of the vested account balance but not more than $100,000) and permitted suspension of loan repayments to avoid loan default.

- Possible extension of certain retirement plan related deadlines (e.g., IRS Form 5500).

- Waiver of 2020 Required Minimum Distributions for Defined Contribution Plans.

The CARES Act was passed and signed today and we will be providing additional details of these new provision shortly.

If you would like to discuss any of the above considerations, please let us know. Thank you for your continued confidence in Pension Benefits Unlimited.