

# Reducing or Eliminating Employer Contributions in Response to COVID-19

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As fear and uncertainty surrounding the coronavirus pandemic continue to mount, so do the financial implications for organizations. Many companies have been forced to temporarily close, others have found themselves in a cash crunch, and all have borne witness to the recent stock market volatility. As organizations assess their costs in an effort to maintain solid footing, some retirement plan sponsors may find themselves looking to reduce or suspend employer contributions. For most defined contribution plans, this is easily done; however, there are some considerations for retirement plan sponsors.

## PLAN DOCUMENT REVIEW

For many retirement plans, the plan document contains language stating that the employer contribution is discretionary and can be modified at any time and for any reason. For these plans, reducing or suspending the contribution is simple and can be done immediately. This is true whether the contribution is a matching or non-elective (base) contribution.

Depending on the plan language, a plan amendment may or may not be required for these types of contribution changes. If necessary, a plan amendment must be adopted by the last day of the plan year that includes the amendment's effective

date; therefore, the suspension or reduction in contributions does not need to wait until an amendment is formally executed. However, amendments are not retroactive; thus, they cannot reduce or eliminate contributions already made or owed to employees. All potential plan amendment issues should be discussed with appropriate outside counsel.

There are still other plan documents that do not allow for any of this flexibility. In this case, outside counsel, with specific expertise in retirement plans, should be consulted before moving forward with the employer contribution suspension or reduction.

## CONSIDERATIONS FOR SAFE HARBOR PLANS

Plan sponsors of ACP/ADP Safe Harbor plans should understand that if they reduce or suspend the safe harbor employer contribution, it will no longer be considered a safe harbor plan, which requires testing. Since most employers maintain a Safe Harbor plan due to testing failures - and Highly Compensated Employee contribution refunds/forfeitures must be made when testing is failed - this may be an issue. However, Safe Harbor plans can generally suspend or reduce employer contributions if the Safe Harbor notice specifically stated that this action could be taken, or if the employer

is operating at an economic loss in the current plan year (which may be easy to justify in the current environment).

## EMPLOYEE COMMUNICATION

While it may not be well-received, employee communication is important. In fact, for Safe Harbor plans, plan sponsors are required to notify participants at least 30 days in advance of the suspension or reduction, and contributions cannot be suspended until after that 30-day period has expired. However, this is vastly different from non-Safe Harbor plans, where a suspension or reduction can be made immediately, if plan language permits. While not technically a requirement for non-Safe Harbor plans, plan sponsors should notify all active plan participants receiving contributions of any suspension or reduction.

## VENDOR COMMUNICATION

Keeping a plan's recordkeeper, third party administrator (TPA) and/or advisor informed is also important, particularly if a plan's participant communication is outsourced. A plan's recordkeeper, TPA and advisor likely have experience with these transitions and can provide guidance as to process and insight into weathering employee relations issues.

## CONCLUSION

While suspending and/or reducing employer contributions can be a simple and straightforward transaction, it is important that plan sponsors discuss the matter with outside retirement plan counsel, along with the other trusted professionals who service the plan, to ensure that the transaction is completed in the proper fashion.

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