



401(K) ISSUES In The Event of a Natural Disaster

We have employees in need of money to recover from losses resulting from Hurricane Helene. Can we make their 401(k) funds available to them?

Yes. Provisions through 401(k) Plans Hardship Distributions may be available to them. Pursuant to 2019 IRS regulations, employers can amend their 401(k) plans to provide hardship distributions for expenses and losses (including loss of income) incurred by employees because of a disaster declared by FEMA.

In order to qualify for this benefit, an employee's principal residence or principal place of employment at the time of the disaster needs to have been located in an area designated by FEMA for individual assistance with respect to the disaster. This allows employees to take hardship distributions for federally declared disasters without waiting for the IRS to announce applicable relief.

If contributions to our pension plan and 401(k) are due in the next few weeks but cause of the hurricane, we either can't make the contribution or can't determine how much is owed, what can we do?

Following a presidential declaration of a major disaster the USDOL, and Pension Benefit Guaranty Corporation (PBGC), routinely issue releases providing for extension of various deadlines for employee pension and welfare benefit plans for victims of the disaster in the affected states. For example, the USDOL has in the past issued statements that it will not seek to enforce ERISA violations for late contributions to retirement plans or deposit of employee contributions (including loan repayments) for plans, plan sponsors, and employers who are located in a county identified for individual assistance by FEMA due to the effects of major hurricanes. But to be eligible for the relief, plan sponsors must act reasonably, prudently, and in the interest of employees to comply as soon as practical under the circumstances. Detailed descriptions of the disaster areas and the relief granted are available on the IRS and USDOL websites.

Our 401(k) record-keeper or bank trustee is not operating. How do employees access their accounts? Where do we make contributions to the plan?

You are under a legal requirement to submit funds to the recordkeeper/trustee as soon as reasonably possible, and no later than the 15th of the month following the payroll. If the recordkeeper is not operating, you should take reasonable steps to segregate the funds in a separate account for the participants to address this problem. However, as indicated above, the USDOL has in the past indicated that it will not seek to enforce violations of ERISA for late deposit of employee contributions to a retirement plan given certain hurricane conditions.

What if we can't meet our payroll tax deposits or file our Form 5500 on time because of the hurricane?

In the past, the IRS has issued relief extending the deadline for filing the Form 5500 Annual Return/Report for employee benefit plans and granting an extension of certain filing deadlines for businesses and individuals located in one of the counties affected by a major hurricane.

Depending on your plan design, your Form 5500 was due July 1, 2024, with a possible extension to October 14, 2024 (if your plan is based on a calendar year), or is due on the last day of the seventh month from the close of the plan year date. You should never assume extensions have or can be granted even in situations where the filing delays may be the result of a natural disaster. Check with your processor and/or the IRS to determine if extensions will be or have been announced due to Hurricane Helene.