
Folks:

Take-Away: The SECURE Act 2.0 expands the availability of hardship withdrawals.

Background: The SECURE Act 2.0 loosened the rules to take a hardship withdrawal from a qualified plan, specifically a 401(k) plan or a 403(b) plan. This in-service withdrawal of pre-tax funds will be taxable, but the withdrawal will not be subject to the 10% excise tax.

Hardship Withdrawal Conditions: Historically, taking a hardship withdrawal from a 401(k) or 403(b) plan required satisfying three separate conditions.

1. The withdrawal must be for an **immediate and heavy financial need**. Most plans allow participants to automatically satisfy this requirement **if** their expense fits into one of seven ‘safe harbor’ categories: (i) medical expenses; (ii) home purchase costs; (iii) post-secondary education expenses; (iv) payments necessary to prevent eviction or mortgage foreclosure; (v) funeral expenses; (vi) expenses to repair home damage; and (vii) disaster-related expenses and losses.
2. The amount of the hardship request **cannot be more than is necessary** to cover the expense.
3. The participant **cannot have enough cash or other liquid assets readily available** to cover the expenses.

457(b) Plans: Of course, to keep things interesting for us, a hardship withdrawal by a participant under a 457(b) plan must meet a stricter

standard than the 401(k)/403(b) plan standard. The expense must have resulted from an **unforeseeable emergency** under the 457(b) plan.

SECURE Act 2.0 Changes: The SECURE Act 2.0 brings some new, more favorable rules, when it comes to hardship withdrawals.

Self-Certification: Beginning in 2023, the Act permits 401(k) and 403(b) plans to allow participants to self-certify that all three conditions [described above] have been met. Although self-certification is optional, not mandatory, most qualified plans will welcome it as a means to minimize the administrative burden of the plan administrator.

403(b) Hardship Withdrawals: The Act also gives 403(b) participants more access to their accounts for a hardship withdrawal. Prior to 2024, 401(k) hardship withdrawals could be made from all plan accounts, but with a 403(b) account, the withdrawal could only come from employee salary deferrals, and not from earnings. Moreover, a 403(b) participant was first required to obtain a plan loan before he/she could receive a hardship distribution, but 401(k) participants were not required to first obtain a plan loan. The Act makes a 403(b)-hardship withdrawal subject to the same rules that a 401(k) participant is subject to, starting in 2024, i.e., no need to first obtain a plan loan.

In-Service Withdrawals: As has been previously covered, the Act also provides new in-service withdrawal options for: (i) federally-declared disaster expenses; (ii) terminal illness (withdrawals to pay long-term care premiums start in 2026;); (iii) victims of domestic abuse; and (iv) emergency expenses. Each withdrawal can be made before age 59 ½ without paying the early distribution 10% excise tax, **but only if the plan sponsor offers the withdrawal under its qualified plan.**

Conclusion: All the federal retirement contribution rules are designed to assure that the work-life contributions and earnings will be available when an individual finally retires. Yet these changes under the SECURE Act also reflect that life can sometimes be unpredictable and having access to these retirement savings, without penalty, is equally important to individuals. What would also be nice to see from Congress is a single set of rules that pertain to contributions and distributions that apply across the board to all types of retirement plans and IRAs- but probably I am dreaming that will ever be the case.

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