

## SLAVIC 401K CURRENT LAW GUIDANCE COVID-19 FAQ

**The CARES Act provides for relief as it relates to plan distributions and plan loans. For more information on these regulations, refer to the CARES Act Summary included in this communication. However, we must rely on existing regulations for other plan provisions not impacted by the CARES Act.**

**Below is a list of Q&As based on current laws which may provide some additional relief and some general guidance to assist organizations during these turbulent times.**

### **Q.1 Our plan includes safe harbor contributions. Can we suspend or reduce those contributions in light of COVID-19?**

If you have chosen to have Tilson sponsor a safe harbor 401(k), Tilson may reduce or suspend safe harbor contributions mid-year by plan amendment. A notice pertaining to supplemental safe harbor must be distributed by Tilson to eligible employees at least 30 days before the effective date of the suspension or reduction, providing eligible employees with a reasonable opportunity to change their deferral election before the suspension or reduction occurs. There is no relief in the CARES Act to eliminate or reduce the notice requirement.

Safe Harbor Plans suspending or reducing the employer contributions during the plan year will be subject to ADP/ACP testing and Top Heavy requirements (if applicable) for the full plan year in which the suspension or reduction occurs.

### **Q.2 Our plan includes non-safe harbor employer matching contributions and/or profit sharing contributions. Can we discontinue contribution in light of COVID-19?**

Yes. Plans may be amended on a prospective basis only, to suspend or reduce employer matching contributions or profit sharing contributions funded per pay period. Contributions accrued prior to the plan amendment must be funded. Employees should be notified by Tilson about any changes to the employer contribution. Slavic recommends a 30 day notice prior to the effective date of the change.

### **Q.3 Employers are being asked to approve plan distributions for furloughed, laid off or participants on a leave of absence due to COVID-19. How will Tilson determine who is eligible for distribution?**

The legal status of a layoff, furlough, leave of absence and other events is not clear as it pertains to whether they constitute a termination of employment or severance from employment, which would allow for a plan distribution. However, a distribution should only be made if there is a bona-fide severance from employment, meaning an employee is not coming back to work. The determination generally relates to whether the employee's common law employment relationship with the employer has ended. This is clearly a factual (and difficult) determination.

In order to help determine if the employment relationship was terminated when the employee was laid off, furloughed or placed on a leave of absence, the following criteria will be considered:

1. If asked about their status of employment, what would the employees answer be?

2. Is the employee still eligible for benefits during the layoff?
3. Is the client-organization holding a job open for the individual and expecting him/her to come back in a short period of time?
4. Is this a temporary layoff?

If the answer to any of these questions is NO, the termination may not qualify as a bona-fide termination.

***The answer to whether these individuals have a distributable event is not clear, and this information only represents general guidance and not legal advice.***

**Q.4 Special payroll codes for COVID-19 related pay may be added and processed accordingly during this time. Is there anything clients and/or employees may need to be aware of as Tilson adds COVID-19 payroll codes?**

Tilson will consult with Slavic prior to implementation of mentioned payroll codes. Slavic will determine if these special payroll codes are considered to be 401(k) eligible compensation.

Note: PTO and Sick time off is eligible compensation for 401k purposes as long as it is paid to an employee listed with an active employment status (no severance of employment), and paid by the employer. No regulations have come out yet to state otherwise as a result of these new payroll codes.

**Q.5. Should Tilson Payroll continue withholding elective deferrals and remitting contributions?**

Provided employees are being paid during any period of business closure in connection with COVID-19, Tilson will continue to withhold employee elective deferrals and work towards a timely remittance of the mentioned contributions. If employees are not paid during any period of business closure in connection with COVID-19, no elective deferrals for that period would be made, because there would be no compensation for employees to defer under the plan.

**Q.6 Various clients of Tilson clients may experience financial struggles in connection with the COVID-19 emergency. Some of these clients may consider pursuing company-wide layoffs. Could layoffs affect an organization's retirement Multiple Employer Plan (MEP)?**

In this instance, Tilson and Slavic will take into consideration the following best practice.

The general rule is that a partial plan termination may occur when 20% or more of total plan participants are laid off in a particular year. Based on previous guidance Slavic received from the IRS, the determination is made based on the entire MEP and not by individual worksites. The partial plan termination rules would require the client-organization to fully vest (100%) all affected participants in every worksite. Keep in mind that a partial plan termination could occur as a result of a single group layoff or multiple group layoffs.