



EMPLOYEE BENEFITS & COMPENSATION PLANNING

# ALERT

## HURRICANES AND HARDSHIP DISTRIBUTIONS: POST SANDY CLEAN-UP

By Keith R. McMurdy

Those impacted by Hurricane Sandy may look to their retirement savings as a place to locate needed money. This Alert will address the rules regarding "hardship distributions."

The IRS has a very good [FAQs for Hardship Distributions](#), but here are some of the basics:

1. A retirement plan may, but is not required to permit hardship distributions. So there are no distributions unless the plan permits them.
2. The plan has to set a specific criteria for distributions and making a determination of a hardship. There has to be a set way to apply for and get approval for the distribution and the rules of the plan have to be satisfied.
3. The IRS generally defines a hardship as "an immediate and heavy financial need" and the most common examples are medical expenses, purchase of a principle residence, tuition, funeral expenses AND "certain expenses for the repair or damage of the employee's principle residence."
4. Employees must have taken all other available distributions and loans from the plan prior to receiving the hardship distribution.
5. Employees cannot make elective deferrals to the plan for 6 months after receipt of a hardship distribution.

6. Hardship distributions are generally limited to the amount of the employee's total elective contributions (less any previous withdrawals).

7. Hardship distributions are generally includable in gross income and may be subject to taxation as an early distribution of elective deferrals.

There are no rules relating specifically to natural disasters, so general hardship distribution rules apply. Congress may pass special acts that allow for post-disaster withdrawals and special treatment, but until they do that, the plan's hardship distribution rules apply. Generally speaking, hardship distributions may be available to an employee to cover the costs of repair or recovery from a natural disaster, provided the plan permits it and they have no other available financial options. It is not designed to be the first source of money. Instead, it should be the option of last resort. Bear in mind, there can be negative tax implications from the distribution.

To conclude, victims of natural disasters may be able to obtain distributions, but likely as a last resort and certainly not without some negative implications.

For more information about amending your plan to include for these distributions, or for assistance in administering these distributions, please contact Keith M. McMurdy at 212.878.7919 or [kmcmurdy@foxrothschild.com](mailto:kmcmurdy@foxrothschild.com) or any attorney from Fox Rothschild's [Employee Benefits and Compensation Planning Practice](#).