

Returning to Work after COVID-19 for 401(k)/403(b) Retirement Plans: *Considerations of Rehiring Laid Off Employees & Re-engaging Furloughed Employees*

As businesses around the nation are reopening and potentially rehiring laid off employees and/or resuming work for furloughed employees, it is important to take immediate action for re-enrolling those employees in the company's Retirement Plan. This document includes considerations and action steps to guide you, the employer, through that process by following provisions in your Plan document as well as IRS/DOL guidelines. The goal is to help you re-engage those employees with their retirement savings path and reduce potential implications that could affect your Plan, immediately and in the long run.

Please keep in mind that lay-offs (severance of employment) of 20% or more, of your eligible participant population, would result in a partial plan termination. A partial plan termination requires immediate vesting of all employer contributions. Please refer to our June 2020 publication, [COVID-19 and Partial Retirement Plan Termination](#), for details and considerations of furloughed employees.

PARTICIPATION ELIGIBILITY

Check your Plan document for Break-in-Service and Eligibility Provision

- Re-enrollment, or re-entry, of rehires and returning furloughed employees will depend upon such provisions
- Break-in-service rules may disregard prior service for purposes of eligibility and vesting
 - A break-in-service is generally an eligibility computation period during which the employee is credited with 500 or fewer hours of service

Furloughed or Unpaid Leave of Absence Employees

- You may need to credit the employee with enough hours of service to prevent a break-in-service as required by the Plan
 - Please review your Plan document

If a returning employee did not incur a Break-in-Service...

- **and** the employee had already satisfied the eligibility requirements prior to being laid off or terminated, the employee must re-enter the Plan on the date of re-employment
- **or** the employee had not yet satisfied the eligibility requirements prior to being laid off or terminated, the employee cannot enroll in the Plan until the eligibility period is completed
 - However, prior service must be considered for eligibility determination purposes

EMPLOYER CONTRIBUTIONS & VESTING

Employer contributions must resume if rehired participants were eligible prior to being furloughed or laid off, unless those employer contributions were suspended on a Plan level

Review your Plan document or recent amendments for changes in employer contributions

Depending on the Plan provisions, employers may want to consider adopting Plan amendments to include a certain amount of furloughed time as a service credit for vesting purposes under the Plan

The following action steps regarding automatic enrollment assume that participants did not incur a break-in-service for eligibility and vesting. Plan sponsors must check their Plan documents and operate the Plan based upon such Plan provisions.

PLANS WITH AUTOMATIC ENROLLMENT IN PLACE

Inform your recordkeeper of the rehires and/or returning furloughed employees and inquire about the logistics with their systems and your payroll

Returning Furloughed Employees...

- **that were automatically enrolled** previously must resume their auto-deferral elections upon returning to work
- **that were not eligible** to participate in the Plan before, will resume their service and prior service will be considered towards the Plan's eligibility computation period
 - Check your Plan document for crediting service

Laid Off Rehires

- If employees were eligible to participate in the Plan prior to being laid off, such employees are subject to automatic enrollment upon rehire unless they opt-out
- If the participant's account was closed due to full distribution, the recordkeeper must re-open the account

Confirm with your recordkeeper that the automatic enrollment of returning furloughed employees and of re-hires took place

PLANS WITH NO AUTOMATIC ENROLLMENT

Inform your recordkeeper of the rehires and/or returning furloughed employees and inquire about the logistics with their systems and your payroll

Returning Furloughed Employees

- Deferral elections must resume on the employees first paycheck unless they voluntarily change, or end, their enrollment
 - Confirm with your recordkeeper and payroll provider that the deferral elections were resumed

Laid Off Rehires

- If the rehire was eligible to participate prior to being laid off, said employee is eligible to enroll upon their rehire date
 - Provide enrollment material/forms/information for the employee to complete and enroll
- If the participant's account was closed due to full distribution, the recordkeeper must re-open the account

NON-DISCRIMINATION TESTING

If non-HCEs reduce or eliminate their salary deferral contributions, the ADP and ACP tests could potentially fail. Thus, it is important to maintain enrollment of current employees as well as of those employees being rehired and returning to work.

This section applies to non-Safe Harbor Plans or Safe Harbor Plans that suspended their Safe Harbor contributions during the year.

Strive to enroll all employees upon returning to work as explained above

If automatic enrollment is not in the Plan, consider amending your Plan to add this provision

For Plans without Automatic Enrollment

- Ensure participant communication/enrollment material is delivered timely via Email, Mail or Flyers in Common Areas to enroll participants
- Coordinate an enrollment campaign with your recordkeeper or USI Consultant

Consider Mid-Year Projection Testing for ADP and ACP Tests

- If tests fail, consider informing the HCEs that refunds may take place unless they stop contributions

LOAN SUSPENSIONS | CARES ACT DISTRIBUTIONS | LEAVE OF ABSENCE

CARES Act Loan Suspensions

- Participants have the choice of resuming the loan payments upon returning to work or continuing with the suspension until the allowable date
- If loans resume, payments must be re-amortized
 - Check with your recordkeeper for the appropriate process and update your payroll accordingly

CARES Act Distributions

- Rehires and returning furloughed employees that met the requirements to be considered a “qualified individual” under the CARES Act will remain as qualified individuals; therefore they will be able to continue to request distributions before December 31, 2020 even though they have returned to work
 - Check with your recordkeeper for the appropriate process

Please note, per the IRS issued Notice 2020-50, the definition of a “qualified individual” has recently been liberalized/expanded.

Leave of Absence (non-CARES Act related)

- Once the LOA ends, missed payments (including interest) may be repaid through making a balloon payment by the end of the original loan period, or the Plan may re-amortize the loan for the remaining loan period
 - Check with your recordkeeper for the appropriate process and update your payroll accordingly

COMMUNICATION TO PARTICIPANTS

Inform affected participants of the process for resuming work including re-enrollment and loan payments when applicable

USI’s RESOURCES & SUPPORT

Refer to [USI’s STEER webpage](#) for additional resources on how to navigate our current environment with respect to all of your benefit/insurance needs – Retirement, Employee Benefit, Property & Casualty and Personal Risk.

DEFINITIONS

ADP – Average Deferral Percentage Non-Discrimination Test (salary deferral test)

ACP – Average Contribution Percentage Non-Discrimination Test (matching contribution test)

LOA – Leave of Absence

Furloughed Employees – Unpaid employees placed on leave but remain active on payroll

Laid Off – Employees that have severance of employment

HCE – Highly Compensated Employees

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95 Glastonbury Blvd., Glastonbury, CT 06033 | 860.652.3239 | 7020.S0623.0090

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