

U.S. Department of Labor Announces Plan Compliance Guidance and Relief for Victims of Hurricane María

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PRACTICE AREAS

- Employee Benefits

An McV Employee Benefits Alert

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On November 21, 2017, the U.S. Department of Labor (“DOL”) announced employee benefit plan compliance guidance and relief for victims of Hurricane María in Puerto Rico. This guidance generally applies to employee benefit plans, plan sponsors, employers, employees, and service providers to such employers in Puerto Rico, which has been identified for individual assistance by the Federal Emergency Management Agency because of the devastation caused by Hurricane María.

This list highlights employee benefit matters covered by the DOL guidance:

Verification Procedures for Loans and Distributions

- An employee benefit plan will not violate Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) solely because it complies with the verification procedures of U.S. Internal Revenue Service (“IRS”) Announcement 2017-15 of November 20, 2017 regarding loans and hardship distributions.
- Under IRS Announcement 2017-15, the IRS determined that:
 - Employee benefit plans meeting the requirements of Section 401(a) of the U.S. Internal Revenue Code of 1986, as amended (“US Code”), will not be deemed in violation of the qualification requirements under the US Code or regulations merely because the plan makes a loan or a hardship distribution to an employee or former employee, for a need arising from Hurricane María, whose principal residence was located in Puerto Rico on September 17, 2017 or whose place of employment was in Puerto Rico on that date or whose ascendant, descendant, dependent or spouse had a principal residence or place of employment in Puerto Rico.
 - Plan administrators may rely on representations made by employees or former employees as to the need of a hardship distribution, unless the plan administrator has knowledge to the contrary, and the distribution will be treated as a hardship distribution for all purposes under the US Code.
 - Hardship distributions resulting from Maria will not be subject to post-distribution contribution restrictions (e.g., after receipt of a hardship

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distribution, the employee is prohibited from contributing for at least 6 months).

- Employee benefit plans may disregard procedural requirements imposed under the terms of the plan for loans and distributions resulting from Hurricane María during the period from September 17, 2017 to March 15, 2018. However, the plan administrator must comply with those requirements as soon as practicable.
- Employee plans that do not provide for loan or hardship distributions, must be amended to provide for loans or hardship distributions as a result of Hurricane María by the end of the first plan year beginning after December 31, 2017 (i.e., December 31, 2018 for calendar year plans).

Late Remittance of Participant Contributions and Loan Repayments

- The DOL will not enforce Title I of ERISA to an employee benefit plan which fails to timely remit employee contributions or loan repayments to an employee benefit trust due to a reason attributable to Hurricane María, provided the employer complies as soon as practical under the circumstances.

Blackout Notices

- With regard to blackout periods resulting from Hurricane María, the employee benefit plan will be released from the 30-day advance blackout notice requirement without having to comply with the requirement to document in writing that the blackout period was due to a natural disaster beyond the control of the plan administrator.

Extension of Certain Periods

- In determining the due date to file a benefit claim, or an appeal from an adverse benefit determination, under a plan's claim procedure, the period from September 17, 2017 through March 16, 2018 will not be taken in account in the case of plan participants, beneficiaries or claimants who were residents of Puerto Rico on September 17, 2017, or whose employee benefit plans were directly affected by Hurricane María.

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The DOL guidance does not take into consideration employee benefit plans only qualified under the Puerto Rico Internal Revenue Code of 2011, as amended, and the Hurricane María relief provisions issued by the Puerto Rico Treasury Department in AD No. 17-29 of November 15, 2017 (“AD 17-29”). You can review our Employee Benefits Alert on AD 17-29 **here**.

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