

Here I Go Again in the Plan... Treatment of Rehired Employees

A Practical Guidance® Article by Benjamin Gibbons, Holland & Hart LLP



Benjamin Gibbons
Holland & Hart LLP

As a result of the current labor shortage that many employers are currently faced with, more and more companies are finding themselves rehiring former employees. If those former employees previously participated in an employer's 401(k) plan prior to their severance from employment, such employers should review their 401(k) plan documents to see how such rehired employees are treated under those plans.

Key Considerations Include:

1. **Eligibility.** Generally speaking, if an employee is rehired within 5 years of his or her previous severance of employment and that employee was participating in (or eligible to participate in) the employer's 401(k) plan prior to his or her severance of employment, the employee will be eligible to participate in the 401(k) plan immediately upon rehire.
2. **Credit for Previous Eligibility and Vesting Service.** If an employee is rehired within 5 years of his or her severance of employment, the employee must receive credit under the plan for the years of service they earned during their previous employment with the company.
3. **Distributions from the Plan.** If a rehired employee previously took a distribution from the company's

401(k) plan in connection with his or her severance from employment (and prior to his or her rehire), the distribution must be "bona fide". Whether or not a distribution is bona fide generally depends on the facts and circumstances of the distribution. A distribution to an employee following the employee's severance from employment without any intention at such time of returning to employment with the company is likely bona fide. Whereas a distribution to an employee who had a prearrangement with the company to be rehired at a later date would not be bona fide.

4. **Restoration of Forfeitures.** Assuming that an employee took a bona fide distribution from the plan and that distribution resulted in the forfeiture of a portion of his or her account, the employee may be able to have the forfeited amounts restored. If the employee repays the distribution amount to the plan within 5 years of the employee's severance from employment, the company will be required to restore the forfeited amount to the employee's plan account.

Bear in mind that these general rules may be modified in some cases by a plan's terms. For that reason, it is always important to review and understand what your plan document requires in connection with rehiring former employees.

Related Content

Practical Guidance

- [Counting Service in Retirement Plans](#)

Benjamin Gibbons, Associate, Holland & Hart LLP

Ben counsels employers on a broad range of qualified retirement plans, health and welfare plans, and other employee benefits arrangements, as well as executive compensation matters.

He provides advice on the design, implementation, and administration of qualified retirement plans, welfare benefit plans, and nonqualified deferred compensation plans, and advises on executive compensation matters with a focus on sections 409A, 457, 280G, 162(m), and 83 of the tax code. Ben also specializes in advising clients in transactional matters with respect to the challenges that arise from transitioning or terminating employee benefit plans, equity incentive plans and deferred compensation arrangements, negotiating purchase agreements, and golden parachute payment matters.

Prior to joining Holland & Hart, Ben was an associate at Choate, Hall & Stewart in Boston, MA. In addition, Ben has over a decade of public accounting experience and is a Certified Public Accountant licensed in Massachusetts.

This document from Practical Guidance®, a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis®. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.
