# THE 401(K) HARDSHIP WITHDRAWAL RULES IN A NUTSHELL

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The September 29, 2021 Slott Report summarized the rules for taking non-hardship withdrawals from 401(k) plans. This article will focus on the hardship withdrawal rules.

Most company savings plans allow you to pull out your funds to take care of a financial hardship at any age. But plans are not required to permit these withdrawals, so check your written plan materials or ask your plan administrator.

Hardship withdrawals from 401(k) and 403(b) plans must satisfy two conditions. First, they must be for an "immediate and heavy financial need." Second, the withdrawal must be necessary to satisfy the financial need.

**Immediate and heavy financial need.** The IRS has published a list of seven "safe harbor" expenses. In most plans, you will automatically satisfy the immediate and heavy financial need requirement if your expense fits into one of those categories. Here are the safe harbor expenses:

- Medical expenses for you, or your spouse, dependents or plan beneficiary.
- Costs related to purchasing your primary residence (but not mortgage payments).
- Tuition, fees and room and board expenses for the next 12 months of postsecondary education for you, or your spouse, children, dependents or plan beneficiary.
- Payments necessary to prevent eviction from your principal residence or to prevent foreclosure on a mortgage on a principal residence.
- Funeral expenses for you, or your spouse, children, dependents or plan beneficiary.
- Certain expenses to repair damage to your principal residence.
- Expenses and losses incurred by the employee on account of a disaster declared by FEMA, provided the employee lived or worked in a designated disaster area.

The last safe harbor, published in September 2019, has proven to be a lifeline for many employees with COVID-related expenses.

**Necessary to satisfy the need.** To prove that the withdrawal is necessary to satisfy your financial need, you must certify that you haven't requested more than is necessary to pay the expense (including taxes or penalty). You also must confirm that you don't have enough cash or other liquid assets to cover the expense and you don't have other access to your retirement funds.

**Section 457(b) standard.** If you participate in a 457(b) plan that allows hardship withdrawals, you're subject to a stricter standard. You must prove that your expense resulted from an "unforeseeable emergency" – that is, from an extraordinary circumstance that you could not have foreseen and that was beyond your control. For example, you can't get a 457(b) hardship withdrawal to cover the cost of purchasing a home or for college expenses.

**Tax consequences.** Hardship withdrawals don't come free. You'll likely be hit with income taxes and the 10% early distribution penalty. Keep in mind there is no hardship exception to the 10% penalty. Also, you can't roll over your withdrawal to an IRA or back into the plan.