Emergencies: A Matter of When, Not If

Preparation is key — steps employers can take before disaster strikes. *The first of two articles.*

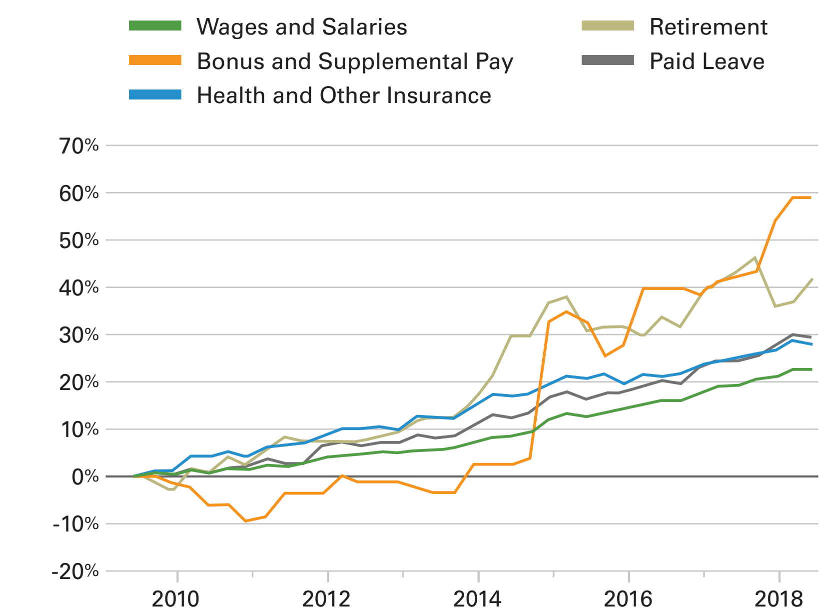
By Jay Kirschbaum and Jack Towarnicky

Many employers have well developed disaster and business continuity plans, featuring disaster recovery teams, etc. Unfortunately, many workers, themselves, are not financially prepared for the next emergency.

In each of the past five years, more than 40 percent of Americans reported they do not have $400 on hand if needed in an emergency.[1] One reason might be that employment and rewards continue to evolve. America's workers have seen a slow shift in rewards away from increases in base salary. Variable compensation is much more prevalent and a much larger component of today's rewards package — paid as benefits, as single sum wage payments (bonus), or paid based on production (gig economy).[2] See Exhibit.

As the compensation schemes have evolved, more than half of American households report that the disruption of wages or an unexpected expense, such as occurs in an emergency, would create a financial challenge.[3]

Exhibit: Compensation Change by Type, Since June 2009



Increasingly, workers look to employers for support in response to emergencies. Organizational response strategies vary significantly given the diversity of employment situations, organizational financial capacity, and the emergencies themselves — from natural disasters such as hurricanes to individual worker challenges such as an unexpected car repair.

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[1] Board of Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2017, May 2018, Accessed 9/19/18 at: https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf

[2] Binyamin Appelbaum, One Reason for Slow Wage Growth? More Benefits, New York Times, 9/25/18, Accessed 9/30/18 at: https://www.nytimes.com/2018/09/25/us/politics/wage-growth-benefits.html?rref=collection%2Fsectioncollection%2Fus See also: Te-Ping Chen, Eric Morath, Wall Street Journal, Benefit Gains Exceed Wage Growth, New Labor Data Show: Value of benefits such as bonuses, health insurance and vacation has risen more quickly than pay, 9/19/18, Accessed 9/19/18 at: https://www.wsj.com/articles/benefit-gains-exceed-wage-growth-new-labor-data-shows-1537289455?mod=searchresults&page=1&pos=7

[3] American Payroll Association, Getting Paid in America Survey, 2018, 9/13/18. Of more than 34,000 survey respondents, 70 percent (21,300 respondents) said they would "find it either somewhat or very difficult to meet their financial obligations if their paychecks were *delayed* one week." https://www.prnewswire.com/news-releases/employees-in-america-living-paycheck-to-paycheck-even-after-tax-reform-300710381.html

Financial Wellness — Preparation Meets Opportunity

Workers' ability to meet emergency needs is not a matter of luck. The best emergency responses involve preparation. And, the best time to prepare is before an emergency occurs.

For households who live payday-to-payday, net pay is about the same as fixed and expected expenses. One survey shows 78 percent of workers would use funds in bank accounts and 49 percent would use credit cards to meet unexpected expenses.[4] One third of surveyed Americans admit they have no emergency savings.[5]

Organizations have responded with a diverse array of financial wellness initiatives designed to improve financial security.[6] Each financial wellness initiative is about changing the financial status quo and improving worker preparation.

Today — Arrows In the Employer's Quiver for a Current Emergency

While we were writing this article,, North Carolina was hit with and is still suffering the effects of hurricane Florence. Employer planning for such an emergency should consider:

- Federal and state laws that provide protections of wages and limitations on discipline when an employee complies with a federal or state order of evacuation.
- Employees who are unable to work due to a natural disaster may be eligible for state or federal unemployment compensation.
- Protections of employees from unreasonable workplace danger — such as from a hurricane.[7]
- Taking care of employees first because facilitating return to work enables business operations to restart while preserving or even increasing the company's reputation, which may also generate good will and benefit the corporate bottom line over time.
- Balancing workers' needs with return to work: where employees should report; do they have the tools, information, and other resources they need to do their job; and what tasks do they need to focus on?
- Ensuring business continuity plans also account for human resource considerations, since most continuity plans focus on backup computer and mechanical systems, off-site locations to resume work, etc.
- Recognizing that the negative effects of a disaster or emergency may continue for an extended period of time.
- Developing contingent pay policies based on what the organization is financially capable of providing.
- Considering the federal Worker Adjustment and Retraining Notification Act (or comparable state requirements) where a facility must be closed or where a mass layoff is necessary.
- Remember that employees' first responsibility is to themselves and their families. They're concerned about their self-preservation; they're thinking about their safety, not their work.
- Turn on managerial radar — identify, address performance issues:
  - Look for signs of performance problems — absenteeism, tardiness, presenteeism, etc.
  - Intervene quickly if performance begins to decline, referring employees to EAP, etc.
  - Document.

Other human resources, rewards and benefit responses for employer/plan sponsors to consider, include:

- "Qualified disaster relief payments" per Internal Revenue Code Section 139 (IRC §139(a)), for individuals in the federally declared disaster area (IRC §1033(h)(3)),
- Interest-free compensation loans per IRC §7872(c)(1)(B),
- Temporary expansion or relaxation of paid and unpaid leave requirements, as well as compliance with USERRA and federal and state FMLA leave laws,
- Emergency paid time off (PTO) sharing,
- Leave-based donation programs,
- Health coverage provisions — consider implementing telehealth provisions, health advocacy counseling programs, as well as emergency provisions for out-of-network providers and cost sharing, advance prescriptions refill policies as well as location services for out-of-area retail pharmacies, and priority outreach for specialty medication orders. Where individuals are enrolled in

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[4] Pew, What Resources Do Families Have for Financial Emergencies? The role of emergency savings in family financial security, November 2015, Accessed 9/19/18 at: https://www.pewtrusts.org/-/media/assets/2015/11/emergencysavingsreportnov2015.pdf

[5] T. Tepper, Bankrate, Most Americans have inadequate savings, but they aren't sweating it, 6/20/18. "Experts recommend households hold six months' worth of emergency expenses in a savings account as a buffer against spiraling into debt should disaster occur. Just 29 percent of adults say they have that large a reserve ..." Accessed 9/19/18 at: https://www.bankrate.com/banking/savings/financial-security-june-2018/

[6] Prudential, Benefits and Beyond: Employer Perspectives on Financial Wellness, 2017. "... Momentum is building – a significant majority of employers (83%) offer financial wellness programs, and another 14% plan to offer them in the next one or two years. ..." Accessed 9/19/18 at: https://www.prudential.com/media/managed/documents/rp/B-and-B_Exec_Summary_Flyer_rF2_DIG.pdf

[7] OSHA, http://www.osha.gov/dts/weather/hurricane/index.html

HMOs and PPOs, a plan sponsor should add provisions that will allow network requirements to be waived in an emergency.

Finally, employers and plan sponsors should keep an eye out for agency actions in response to natural disasters like hurricanes. Last year, in response to hurricanes Harvey, Irma, and Maria, as well as wildfires, the Internal Revenue Service (IRS), the Department of Labor (DOL), and the Pension Benefit Guarantee Corporation (PBGC) each issued temporary relief on deadlines and procedural requirements for hardship withdrawals and other provisions in tax-qualified employee benefit plans. The IRS has announced relief for hurricane Florence.[8] However, employers should not rely on those relief provisions. They should have a plan in place for compliance in the event that there is no relief from the IRS with respect to the emergency situation of the particular employer.

Tomorrow — Some Tough Decisions For Plan Sponsors

Congress recently took action to reduce the impediments to taking pre-retirement hardship distributions.[9] Such distributions are commonly referred to as leakage and many believe it is a major issue impeding worker preparation for retirement.[10] Plan sponsors should carefully consider their response to these recent changes — including options to curtail hardship distributions in favor of liquidity in the form of plan loans.

Most workers should financially prepare for emergencies — much as they would for retirement. However, more than 70 percent of surveyed workers confirm that they are living payday-to-payday[11] and that same survey shows that more than 85 percent of eligible workers contribute to their employer-sponsored individual account retirement savings plan. As a result, workers who experience an emergency may want to access retirement assets. If your retirement plan provides for loans and hardship withdrawals, you may want to consider features designed to help workers save more in anticipation of emergencies along the way to retirement.

As of month-end September 2018, Congress has proposed, but has yet to approve, additional relief with regard to tax-qualified retirement plans for those affected by hurricane Florence.[12] Should relief be approved, plan sponsors should carefully consider any relief offered by Congress.

Plan sponsors may want to consider strategies that will leverage already high levels of retirement savings plan participation through changes in plan provisions to eliminate hardship withdrawals, favor liquidity without leakage through plan loans,[13] and to add features designed to encourage workers to prepare for future emergencies by increasing their savings.[14]

Hurricane season doesn't end officially until November 1st. Moreover, even though your employees and their families may not live in North or South Carolina, someday they will also face an emergency or national disaster. The time to prepare is now.

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[8] IRS extends upcoming deadlines, provides tax relief for victims of Hurricane Florence, 9/15/18, Accessed 9/28/18 at: https://www.irs.gov/newsroom/irs-extends-upcoming-deadlines-provides-tax-relief-for-victims-of-hurricane-florence See also: Tax Relief for Victims of Hurricane Florence in North Carolina, 9/15/18, Accessed 9/28/18 at: https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-florence-in-north-carolina See also: Tax Relief for Victims of Hurricane Florence in South Carolina, 9/24/18, Accessed 9/28/18: https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-florence-in-south-carolina

[9] J. Towarnicky, Hardship Withdrawals — An Attractive Nuisance Becomes More Attractive, 2/9/18, Accessed 9/19/18 at: https://www.psca.org/blog_jack_2018_5

[10] Employee Benefits Research Institute, Reducing Retirement Savings Leakage, August 2016, Accessed 9/19/18 at: https://www.ebri.org/publications/notes/index.cfm?fa=notesDisp&content_id=3372

[11] American Payroll Association, Note 3, Supra

[12] H.R.6854 – Hurricane Florence Tax Relief Act. Proposed legislation would provide tax favored withdrawals from retirement plans by waiving the 10% penalty tax on "qualified hurricane distributions" of up to $100,000, where such distribution will be included in income ratably over a three year period, and where the distribution may be repaid within three years of receipt. With respect to plan loans, the maximum loan amount is increased from $50,000 to $100,000, and the plan can permit a loan of up to 100% of the non-forfeitable accrued benefit (instead of limiting the loan to no more than 50%), and loan repayments can be delayed for up to 1 year. Further, the legislation provides for a 40% tax credit, maximum $6,000 for retention payments an employer makes to "eligible employees". Various other changes are proposed. Accessed 9/28/18 at: https://www.congress.gov/bill/115th-congress/house-bill/6854?q=%7B%22search%22%3A%5B%22florence%22%5D%7D&r=1

[13] J. Towarnicky, Qualified Plan Loans — Evil or Essential? — Part 1 & Part 2, 5/15/18, 6/20/18, Accessed 9/19/18 at: https://www.psca.org/blog_jack_2018_28 https://www.psca.org/blog_jack_2018_31

[14] J. Towarnicky, Sidecar = Suboptimal, 7/30/18, Accessed 9/19/18 at: https://www.psca.org/blog_jack_2018_36