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# When Do I Start Taking 401(k) RMDs If I'm Over 72 And Still Working?

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Some people who are still working after age 72 can delay required minimum distributions (RMD) from their 401(k)s, but there are important limitations.

RMDs from your company's 401(k) can be delayed until April 1 of the year *after* "the calendar year in which ***you retire from employment*** with the employer maintaining the plan," according to IRS Publication 575**.** I covered this topic in an earlier post and received some questions from Forbes readers who wanted to know more.

## When Is The First RMD?

G.S., who recently retired, asked: "I am 85 years old and retired (after 60 years) on January 15, 2022. When is my first RMD due? When is my next RMD due?"

I should caution anyone in this position to be sure to check their 401(k) plan provisions and to consult with their tax advisers before taking or not taking an RMD. Each person's situation is unique and can lead to different answers. Here, we'll go over the general rules. Again, you'll have to do some homework before deciding on the right course for yourself. Too much is at stake for making a wrong turn, including a 50% penalty for failing to take an RMD on time.

## You Can Delay 401(k) RMDs; But NOT IRA RMDs

According to Internal Revenue Code Section 401(a)(9)(C), a 401(k) participant who is still working after age 72 can delay taking an RMD from his or her qualified plan (for example, a 401(k) plan). How long can you delay? Until you retire.

This rule does not apply to people who own more than 5% of the business for which they are working. That is, they will have to start taking their RMDs at age 72. They cannot take advantage of a delay. Neither can owners of traditional individual retirement accounts (IRAs).

## More Details

According to IRS Publication 575, "Pension and Annuity Income": "Unless the rule for 5% owners applies, you must *generally* begin to receive distributions from your qualified retirement plan by April 1 of the year that follows the later of: The calendar year in which you reach age 72, or the calendar year in which you retire from employment with the employer maintaining the plan."

Why "generally"? Pub. 575 points out that "your plan may require you to begin to receive distributions by April 1 of the year that follows the year in which you reach age 72 even if you haven't retired." Be sure to check out your 401(k)'s summary plan description for more details.

When do you "retire"? That depends on your employer and how terminating employment is handled in your plan.

## When Do You 'Retire'?

For most people who retire, the year of retirement is pretty clear. For example, G.S. retired in January of 2022. G.S.'s RMD can be taken in 2022 (based on his 12/31/2021 value). He also has the option of waiting to take two RMDs in 2023, with his first RMD no later than April 1 of 2023 (the year that followed the calendar year of his retirement). He would also need to take his 2023 RMD (based on his 12/31/2022 value) in 2023 as well.

But, for some, the 401(k) plan will need to be the guide.

For example, what happens if your last day of work is Dec. 31, 2021? Is that the day you retire? Or is it Jan. 1, 2022, the first day you are no longer working? If it's the former, you need to take an RMD for 2021; if its the latter, you don't.

## What Do the Experts Say?

I reached out to Marcum LLP, a national accounting and advisory firm, for insights on this very important timing question.

"If a taxpayer is still employed on Jan. 1, then they can utilize the 'still-working exception' to delay starting their RMDs from their qualified plan for an additional calendar year," explained Alex Kotwal, a CPA and tax manager for Marcum. "The final date of employment would generally be the last day on which they perform services for their employer."

If you are considering retiring at the end of the year, think about retiring in January instead, if your employer permits. No matter what you do, be sure to get tax advice before deciding that you are or are not "retired," for purposes of your first RMD.

## ONLY Your Current Employer's 401(k)

Here is an important thing to keep in mind: The delayed RMD provision (because you are still working) applies only to your *current* employer's plan ("the employer maintaining the plan"). If G.S. had a 401(k) with another employer, he would have had to start his RMDs from that 401(k) at age 70 1/2 (before the Setting Every Community Up for Retirement Enhancement (SECURE) Act, signed by the president on Dec. 20, 2019, changed the RMD age to 72). Also, if the current plan permitted rollovers, he could have rolled the old plan into his current employer's 401(k) to allow for the "still working" RMD delay that applied to his current 401(k).

## IRAs Are Different

RMDs from traditional IRAs don't follow the "still working" rules. You have to start your RMDs at age 72, whether you are working or retired. Roth IRAs, on the other hand, have no RMDs during the lifetime of the Roth IRA's owner.