

Advisor Insights

# What can we do if my ex-husband is trying to get his 401k to cash out from his previous employer but they are refusing to give it to him?



How can my ex-husband get it if he has been unemployed since January and they are also refusing to let him get unemployment help? He really needs the help. We have 2 small children and he hasn't been able to take them on his required weekends because he hasn't gotten another job yet, and can't buy food for them or himself. Can you give me any info on how to help him with this?

MARRIAGE / DIVORCE, PERSONAL FINANCE, 401(K)

## ANSWERS

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So sorry your ex-husband lost his job in January! Indeed the ripple effects of no new job or income, nor access to his previous job's 401(k) monies is also affecting your children, and, of course, you.

While I don't know the particulars of your ex-husband's 401(k), nor the size of the company for which he worked, he would typically state in writing that his last day of employment was X, and that he wishes to receive a full distribution of his 401(k) monies--both his tax-deferred monies as well as any vested portion of the company's match, if any--immediately. He may wish to send said letter via certified return-receipt-requested letter, or hand deliver said letter and get a member of the former employer's human resources department, or better yet, the 401(k) plan administrator to sign that they've received the letter, in order to leave a trail that he is serious about receiving his 401(k) monies.

The plan administrator HAS to receive company verification that any employee is terminated, insomuch as sometimes people are given vacation pay, or severance, etc., which extends their termination date, in some cases. Although January termination causes me to surmise that isn't the case here. So, if he has done this, he may need to seek legal counsel--make sure to retain an attorney with knowledge of ERISA--the laws governing pensions & retirement plan assets, yet I don't know how he will afford to pay for legal counsel frankly.

Alternatively, he can establish an IRA account at a brokerage company or bank or credit union, etc., and ask that new trustee of his new IRA, to request an automatic transfer of all his 401(k) assets into the new IRA, which is called an ACATS transfer (Automated Customer Account Transfer Service). Often plan administrators will comply with these ACAT transfer requests since they are receiving the request from another custodian, and not 'just' an employee. (I feel horrible even typing 'just an employee', since every employee is entitled to their monies!)

If your ex-husband's retirement plan is a defined contribution plan into which only the company contributed monies, and your ex-husband didn't contribute any monies, you have a wholly different situation, in which he needs to read the Plan Adoption agreement and the annual statement to see when they distribute funds--maybe only once a year, like at the end of the year. Also, if there were company matched contributions, these are subject to a vesting schedule, such that if your ex-husband didn't work long enough at the company to satisfy the full vesting rights, he may only receive a portion of the company's matching dollars. For example, sometimes a vesting schedule is 20%, 40%, 60%, 80% and 100% for a corresponding number of years worked, like one could be 20% vested after 1 year of service, and then 40% vested after 2 years of service, for example.

As to why he hasn't received unemployment payments, has he applied to his state of residence for unemployment benefits, presuming he was fired or down-sized? If he quit the job, he wouldn't normally be eligible for unemployment benefits. He may wish to contact his local county for any help given to unemployed persons, so he could receive food stamps perhaps. This is outside my specialty, yet a Google search of local agencies should prove helpful in gaining access to some temporary benefits, at least.

In the meantime, depending on how much money you have, and how badly you need his required weekends to work out so you can attend to details in your own life, you may pack your two small children and your ex a few brownbag lunches/dinner--even PB & Jelly and tap water into containers along with an apple or banana--and send them to the park, or any number of free activities.

Sorry if this seems lame; yet I hope you all get some relief(s) soonest!

Was this answer helpful?



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He should contact the "third party administrator" for the 401k plan. This contact information should be on his statement. If he is separated from service with the employer he may be able more...

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