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Your Former Employer's 401(k) Plan

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Fact Sheet

PENSION ACTION CENTER, GERONTOLOGY INSTITUTE

JOHN W. McCORMACK GRADUATE SCHOOL OF POLICY AND GLOBAL STUDIES

Your Former Employer's 401(k) Plan

When you leave a job where you have participated in a 401(k) plan, you may have a number of different options about what to do with the money in that account. This fact sheet explains those options and offers guidance about the pros and cons of each option.

Here are some frequently asked questions:

Q. Can I leave my money in my former employer's plan?

You may be able to do this. However, if the balance in your account is less than \$5,000, the plan could have a rule prohibiting you from leaving the money in its account. This is called a "forced distribution." Refer to the plan's [Summary Plan Description](#) to see if it has this type of rule.

If you do not fall under a "forced distribution" rule, you can keep the account with your old employer and start a new account with your new employer as well. There are no restrictions on how many 401(k) accounts you can have.

You may decide to keep the funds in your former employer's 401(k) plan if you are satisfied with the investment options it offers you and if the investment options have performed well for you. However, the plan may change its options in the future, so there is no guarantee of future performance.

Some words of caution about keeping your money in a former employer's account

Be sure that the plan always has your current address, and be sure to stay aware of the company's status. Subsequent changes to the company, such as sales or mergers or bankruptcy, might make it difficult to keep track of your funds. See below for a further discussion of finding a former employer's 401(k) account.

Q. What are my other options?

If you cannot leave the money in your former employer's plan or if you choose not to leave it there, your options are:

1. **Immediate rollover to new employer's plan:** See if your new employer has a 401(k) that will accept an immediate rollover of the funds from your former employer's account. In that case, you can fill out paperwork requesting the plan sponsor to send the funds directly to the new employer's account.
2. **Deferred rollover to new employer's plan:** Your new employer's account may not allow you to participate immediately; it might have a one-year requirement for participation. In this case, you can set up a "rollover IRA" account with a bank or other financial institution, and have your former employer transfer the funds into that rollover account. If you plan to roll the assets over into the new account when you become a participant, make sure that this IRA holds only the funds from the previous employer's 401(k). In other words, you cannot use an existing IRA or deposit any other money into the account. Once you become a participant in your new employer's plan, you could roll these assets into it.
3. **Transfer to an IRA:** You may transfer the balance in your account to a new or existing Individual Retirement Account. If this is done as a "trustee - to-trustee" transfer directly from the 401(k) plan to the IRA account, no taxes are taken out during this transfer. If you have the 401(k) balance sent directly to you, however, 20% will be deducted and sent to the IRS.

**Some words of caution about having your funds
in an IRA as opposed to a 401(k) plan**

Money in a 401(k) plan cannot be touched by creditors. If you are sued or if you file for bankruptcy, that money is protected by federal law. Funds in IRAs may be protected from creditors by state law, but that protection varies from state to state. For information about the laws protecting retirement savings in the New England states, please see our fact sheet:

["Protecting Your Retirement Savings from Potential Creditors."](#)

4. **Withdraw the funds:** As a former employee, you can request the distribution of your 401(k) assets at any time. However, if you take the money as a distribution, the plan will withhold 20% for taxes and send it to the IRS. If you are under age 59 1/2, you will, under most circumstances, also be subject to a 10% penalty.

Q. If I decide to withdraw the account balance from my former employer's plan, how do I do that, and how long should it take?

As a former employee, you should be able to simply contact your former employer and request whatever forms are necessary for the distribution to be made.

Check the plan's [Summary Plan Description](#) to see how often the plan makes distributions. Some plans only make distributions at fixed times, such as quarterly or even annually. This might be linked to the plan's valuation date. Some plans determine account balances on a daily basis, but some might do it on a more infrequent basis, for example, monthly, quarterly, semi-annually, or annually. If this is not described in the Summary Plan Description, ask about the plan's valuation cycle when you ask for the distribution request forms.

If you have difficulty getting your former employer to give you the forms or to make the requested distribution, contact one of the pension counseling projects funded by the U.S. Administration for Community Living/ Administration on Aging. These projects cover 30 states and provide free pension counseling and advocacy. You can find a directory of them at: <http://www.pensionrights.org/find-help>. Another source of help, especially if you live in a state not served by one of these projects, is the U.S. Department of Labor's Employee Benefits Security Administration, which you can reach by calling 866-444-EBSA.

Q. My former employer does not seem to be in business any more. How can I get the money from my old 401(k) now?

The first thing to note is that your account balance in that account is protected by federal law. Although it might take a little detective work to find it, you should not lose the money because your employer has gone out of business, relocated, merged with another company, or gone bankrupt.

If you live in one of the 30 states served by the pension counseling projects described above, you should contact that project. These projects, funded by the U.S. Administration for Community Living/ Administration on Aging, provide free pension counseling and advocacy. You can find a directory of them at: <http://www.pensionrights.org/find-help>.

There are a number of helpful suggestions for tracking lost pension funds in a booklet published by the Pension Benefit Guaranty Corporation, entitled, "Finding a Lost Pension." This booklet is available on the [PBGC's website](#). Although 401(k) plans do not fall under the authority of the PBGC, you can use most of the advice in the booklet to help you search for any retirement plan sponsored by a former employer, including a 401(k) plan.

Do you have any questions about this fact sheet? Call the Pension Action Center at 888-425-6067 or visit us online at pension.umb.edu

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This fact sheet is intended to provide general information about pensions and other retirement benefits and should not be used as a substitute for a consultation with an attorney or other legal professional. Individuals should always consult a legal or financial advisor to discuss the facts and circumstances of their specific situations.

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