COMPLIANCE | October 30, 2026

IRS Holds Employees Count as 'Retired' for 401(h) Medical Benefit Purposes at Age 59.5

Reported by EMILY BOYLE

The IRS on October 28 issued a revenue ruling that holds employees count as retired for the purpose of receiving 401(h) medical benefits once they reach age 59.5.

An Internal Revenue Code Section 401(h) account is a separate account inside a defined benefit plan that pays medical benefits, ordinarily for retirees and their families. Under IRC Section 401(a)(36), employees who have not separated from employment are eligible to take in-service distributions once they reach age 59.5, if their employer implements the benefit. This ruling extends Section 401(a)(36) to the 401(h) account use case.

Get more! Sign up for PLANSPONSOR newsletters.→

Revenue Ruling 2026-22 addressed a set of three circumstances: the medical account is overfunded, the plan has not moved pension surplus into the account under IRC Section 420 special transfer rules and "key employees" are excluded.

The IRS defines a "key employee" as an employee who owns more than 5% of the business, has annual compensation greater than a certain amount or is an officer with compensation greater than a specific amount.

According to Aon PLC's Global Pension Risk Survey 2025, more than one-third of plan sponsors reported they would not consider (37%) or lacked enough knowledge to respond about (35%) using 420 transfers to 401(h) accounts, which the Setting Every Community Up for Retirement Enhancement 2.0 Act of 2022 authorized plan sponsors to do to fund retiree health and/or life insurance benefits.

Andrew Oringer, an ERISA attorney and head of the Wagner Law Group's New York office, says the ruling is somewhat narrow in scope, as it is only relevant to employers that use defined benefit assets in 401(h) accounts to pay retiree medical and certain similar benefits. He says the use of 401(h) accounts is not necessarily common, but neither is it a rarity.

"For those employers with 401(h) accounts, the ruling … could provide the employer with another path to soak up some excess assets where, for example, the 401(h) account is overfunded," Oringer says. "However, for the ruling to be of use, the plan has to have a 401(h) account and the employer had to be looking for an additional way to use, or increase, the amount of assets in the 401(h) account."

Tags 401(h), DB plan funding, retiree medical costs

Reported by Emily Boyle