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Employee Benefits Update *January 12, 2023*

Highlights of the SECURE Act 2.0 Retirement Plan Legislation for Employers

As 2022 came to a close, Congress passed comprehensive, bipartisan retirement legislation — called "SECURE Act 2.0"— as part of the government's mammoth $1.7 trillion omnibus spending bill known as the Consolidated Appropriations Act of 2023. SECURE Act 2.0, signed into law on December 29, 2022, builds upon the SECURE Act of 2019 by further expanding access to retirement plans and revamping rules governing retirement plans.

This Employee Benefits Update summarizes key provisions of the new legislation pertaining to retirement plan contributions, investments, distributions, and newly-established retirement plans. Unless noted below as "optional," changes required under SECURE Act 2.0 are mandatory, and the deadline to amend plan documents for required changes is not until the last day of the 2025 plan year (December 31, 2025 for calendar year plans).

<u>Changes to Retirement Plan Contributions & Investments</u>

New Provision	Effective Date
Eligibility of Part-Time Workers: Part-time workers must be eligible to make deferrals to their employer's 401(k) plans after 1 year of service (1000 hours) or 2 consecutive years (with 500 hours each); pre-2021 service is disregarded.	Plan years beginning after 12/31/2024
Catch-Up Contributions Treated as Roth: All catch-up contributions must be made as Roth after-tax contributions, except for employees whose compensation is $145K or less (indexed for inflation).	Tax years after 12/31/2023
Higher Catch-Up Contribution Limit: The catch-up contribution limits for ages 60-63 will increase to the greater of $10K or 150% of the regular catch-up amount in 2025, indexed for inflation.	Tax years beginning after 12/31/2024
Matching Student Loan Repayments: Employer matching contributions are permitted on qualified student loan payments. ***Optional.***	Contributions made for plan years after 12/31/2023
Employer Contributions Treated as Roth: A plan may allow participants to elect to treat employer nonelective or matching contributions as Roth after-tax contributions. ***Optional.***	Contributions made after 12/29/2022
Financial Incentives to Contribute to a Plan: De minimis financial incentives for contributing to a plan, such as low-dollar gift cards, are permitted. ***Optional.***	Plan years after 12/31/2022
Emergency Savings "Side-Car" Accounts Linked to Retirement Plans: Pension-linked emergency savings accounts for non-highly compensated employees are permitted. Employers may automatically opt employees into these accounts at no more than 3% of their salary; the portion of the account attributable to employee contributions is capped at $2,500 (or lower if determined by the employer). Once the cap is reached, additional contributions can be directed to the employee's Roth account in the employer's defined contribution plan. Contributions to the emergency savings account are	Plan years after 12/31/2023

made on a Roth-like basis and treated as elective deferrals for matching contributions, with the annual matching cap set at the maximum account balance (i.e., $2,500 or a lower limit set by plan sponsor). The first 4 withdrawals from the emergency savings account are not subject to fees or charges. At separation from service, accounts can be distributed in cash or rolled to the participant's Roth account in a defined contribution plan or IRA. ***Optional.***	
Expansion of CIT Investments to 403(b) Plans: 403(b) plans can use CITs (collective investment trusts), which are often lower-priced than comparable mutual fund investments—although additional changes to Federal securities laws are needed before this becomes a reality. ***Optional.***	Amounts invested after 12/29/2022

Changes to Retirement Plan Distributions

New Provision	Effective Date
Gradual Age Increase for Required Minimum Distributions ("RMDs"): The required beginning date for required minimum distributions from qualified plans is increased from age 72 to 75, phased in over 10-year period from 2023-2033.	Distributions made after 12/31/2022, for individuals who attain age 72 after that date
Penalty Reduced for Missed RMDs: The penalty for failure to take required minimum distributions is reduced from 50% to 25%--and to 10% for certain corrections that are completed in a timely manner.	Plan years after 12/31/2022
RMDs not Required for Roth Accounts: Pre-death required minimum distributions are not required for Roth amounts held in an employer qualified plan.	Tax years after 12/31/2023
Hardship Distribution Certifications: Employee self-certification of hardship distributions is permitted. ***Optional.***	Plan years after 12/31/2022
Penalty-Free Distributions for Terminal Illnesses: Penalty-free early distributions to participants with terminal illness are permitted. ***Optional.***	Distributions made after 12/29/2022
Penalty-Free Distributions for Domestic Abuse Victims: Penalty-free withdrawals for victims of domestic abuse (self-certified) are permitted, up to the lesser of $10,000 (indexed for inflation) or 50% of the participant's account; can be repaid over 3 years, and income taxes paid will be refunded. ***Optional.***	Distributions made after 12/31/2023
Penalty-Free Disaster-Related Distributions: $22K can be distributed in case of qualified federally-declared disasters, not subject to 10% penalty tax. ***Optional.***	Disasters occurring after 1/26/2021
Penalty-Free Emergency Withdrawals: 1x per year emergency withdrawal, of up to $1,000, is exempt from the 10% penalty tax as long as it is repaid within 3 years, provided that no further emergency distributions are permissible during the 3-year repayment period unless repayment occurs. ***Optional.***	Distributions made after 12/31/2023
Increase in Cash-Out Limit: The permissible cash-out limit for small balances has increased from $5,000 to $7,000. ***Optional.***	Distributions made after 12/31/2023
Automatic Portability of Small Balances: Plan service providers can offer auto portability for balances under $5K that were cashed out and moved to a default IRA; they can now be automatically transferred into the retirement plan sponsored by the participant's new employer, unless the participant elects otherwise. ***Optional.***	Transactions occurring on or after 12/29/2023

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Provisions for New Retirement Plans

New Provision	Effective Date
Automatic Enrollment Required in Newly-Established Plans: New 401(k) plans and 403(b) plans established after December 31, 2024 must auto enroll participants with contributions of at least 3%, no more than 10%. Annual auto increases of 1% are required until the contribution reaches at least 10%, but not more than 15%. Employees can opt out, and there are exceptions, including for small businesses with 10 or fewer employees or new businesses younger than 3 years.	Plan years after 12/31/2024
Increases in Plan Startup Credits for Small Employers: The small employer pension plan startup credit, for employers with 50 or fewer employees, is increased from 50% to 100% of the administrative cost of establishing the plan (or $5,000, if less). In addition, there is a new tax credit for small employers with 50 or fewer employees, for contributions made to a newly-established retirement plan (other than a defined benefit plan). The new credit is equal to a set percentage of the amount contributed by the employer, up to a per-employee cap of $1,000 (although contributions to employees with compensation in excess of $100K, as indexed, are not taken into account). The set percentage phases out over 5 years, and the credit also phases out for employers with 51-100 employees.	Tax years after 12/31/2022
New "Starter 401(k) Plans" Permitted: Starter 401(k) plans will be permitted for employers that do not sponsor a retirement plan – requiring all employees to be enrolled at a 3-15% deferral rate, with the limit on annual deferrals being the same as the IRA contribution limit. ***Optional.***	Plan years after 12/31/2023

In addition to these changes, SECURE Act 2.0 makes a number of other significant changes to self-correction procedures, notice distributions, and other aspects of qualified plan administration. The new law also directs the IRS and the DOL to issue guidance in a number of different areas, including the appropriate benchmarks for asset allocation funds, such as target-date funds.

We will be hosting a webinar for our clients on SECURE Act 2.0 in the coming weeks. In the meantime, however, if you have any questions about the impact of the new legislation on your retirement plans, please contact any member of our Employee Benefits and Executive Compensation Practice Group listed below.

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