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Employee Benefits Update

Summary of Important Elements of the SECURE 2.0 Act Legislation

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On December 29, 2022, the SECURE 2.0 Act of 2022 ("Setting Every Community Up for Retirement Enhancement Act") was signed into law as part of the Consolidated Appropriations Act of 2023, which funds the government through September 30, 2023.

The SECURE 2.0 Act of 2022 builds upon the SECURE Act, which was enacted in December 2019.

Below is a high-level summary of several important provisions that will have an impact on sponsors or administrators of retirement and welfare plans.

Some of the changes are required to be implemented for 2023; others are optional or have delayed effective dates. The changes, to the extent required or adopted at the discretion of the plan sponsor, will require plan amendment. In many cases, the Internal Revenue will need to issue additional guidance on how to implement the provision.

Changes Effective with the Act's Passage

- The excise tax for failure to take RMDs is reduced from 50% to 25%. If the individual corrects the shortfall during the 2-year correction window, the excise tax is reduced to 10%.
- Plans can offer individuals the option to characterize some or all matching or nonelective employer contributions as Roth contributions. The contributions are not excludable from the employer's income and must be fully vested at the time they are made.
- Expanded ability for plans to self-correct failures through ERCRS. Plans can now self-correct plan loan failures and any "eligible inadvertent failure."
- 403(b) plans can now invest in collective investment trusts. However, securities laws prohibit such investment in most cases, so plans will need to wait for these securities laws to change before taking advantage of this SECURE 2.0 provision.
- Certain plans will no longer lose their tax favored status by failing to recover an inadvertent benefit overpayment or otherwise amend the plan to permit this increased benefit. Some new protections and restrictions also apply if a plan seeks recovery of overpayments.

Effective in 2023

- The RMD age increased to age 73 for a person who attains age 72 after December 31, 2022, and age 73 before January 1, 2033. The RMD age will increase to age 75 for a person who attains age 74 after December 31, 2032.

- Plans can now offer employees de minimis financial incentives (such as small gift cards) contingent on the employee making contributions to a retirement plan.
- Previously, participants could purchase a Qualified Longevity Annuity Contract (QLAC) for the lesser of 25% of their plan account or $145,000. SECURE 2.0 eliminates the 25% limit and increases the dollar limit to $200,000.
- Plans were previously required to provide numerous notices to unenrolled employees. Now, plans need only provide an annual notice of eligibility.
- Plans can now rely on an individual's self-certification of a hardship for purposes of taking a withdrawal from a 401(k) or 403(b) plan.
- Individuals who are terminally ill can now make penalty-free withdrawals.
- 403(b) plans are now able to participate in multiple employer plans (MEPs) and Pooled Employer Plans (PEPs).
- PEP trustees, who are responsible for collecting contributions and implementing written collection procedures, can delegate this duty to any other named fiduciary (other than the participating employer).

Effective in 2024

- Roth amounts in plans will be exempt from RMD rules while the participant is alive. Previously, only Roth IRAs were exempt.
- Catch-up contributions made by individuals to 401(k), 403(b), and governmental 457(b) plans must be made on a Roth (after-tax) basis, except for individuals whose prior year wages do not exceed $145,000.
- Plan sponsors can make matching contributions with respect to employees' qualified student loan payments.
- Plan sponsors of 401(k) and 403(b) plans can create emergency savings accounts which non-highly compensated employees may make after-tax contributions.
- One withdrawal of up to $1,000 for emergency expenses can be taken from plan account without paying the 10% penalty on early withdrawals.
- Previously, plan sponsors could distribute and rollover participant's retirement accounts into an IRA when the balance was $5,000 or less without first obtaining consent. SECURE 2.0 increases that limit to $7,000.
- Individuals can make certain penalty-free early withdrawals up to the lesser of $10,000 or 50% of the vested account value in cases of domestic abuse.

Effective in 2025

- Subject to certain exceptions, newly established 401(k) and 403(b) plans must contain an automatic enrollment provision with a default rate of between 3% and 10% with a 90-day unwind feature. New plans must also provide for automatic escalation of 1% per year up to a maximum of at least 10%, but no more than 15%.
- Individuals age 50 or older can currently make "catch-up" contributions. A higher catch-up limit will apply for individuals age 60-63. For non-SIMPLE plans, the limit will increase to the greater of: (i) $10,000 or (ii) 150% of the regular catch-up amount for 2024, indexed for inflation.

- Plans are currently required to allow individuals with 500 or more hours of service in each of 3 consecutive years could make contributions to a 401(k) plan. This eligibility requirement will be shortened from 3 to 2 years.

Effective in 2026

- Plan administrators must give paper statements to participants at least once a year for defined contribution plans and every 3 years for defined benefit plans, unless employees opt in to electronic delivery and the plan follows electronic delivery rules.

Special Effective Dates

- Previously, when a federally declared disaster occurred, Congress eased rules pertaining to plan administration and loans on a case-by-case basis. SECURE 2.0 provides permanent special rules governing plan distribution and loans for federal disasters occurring on or after January 26, 2021. Notably, up to $22,000 can be distributed to each participant per disaster, and that amount is exempt from the 10% early withdrawal penalty.
- Plan administrators will be required to give specified notices to participants being offered a lump sum distribution at least 90 days before a decision period. However, this provision will not be in effect until the DOL issues final regulations.

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This Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions, please call **William S. Carter** at 412.566.6016, **Kathryn A. English** at 412.566.1226, **Heather Stone Fletcher** at 412.566.6112, **Sandra R. Mihok** at 412.566.1903, **Paul M. Yenerall** at 412.566.1944, or any other attorney with whom you have been working.