SECURE 2.0 Makes Several Key Changes for Employer Sponsored Retirement Plans

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Retirement Plans

On December 29, 2022, as part of the Consolidated Appropriations Act of 2023, President Biden signed into law the SECURE 2.0 Act of 2022 ("SECURE 2.0"). SECURE 2.0 makes many significant changes to the employer sponsored retirement plan landscape that employers must be aware of in the coming years. This article does not address all changes impacting retirement plans and participants, such as those related to certain tax incentives and credits or technical changes; rather, it focuses on the changes to the rules governing qualified retirement plans that may require amendments to plans. It also summarizes rules that apply to most retirement plan sponsors but does not address every change that may apply to certain distinct types of employers.

Required Beginning Date Change

The required minimum distribution age is increased from 72 to 73 starting in 2023 for those who attain age 72 after 12/31/2022 and before 01/01/2033. The age increases again to 75 starting January 1, 2033. Plan amendments will be required in order to implement this change.

Requirement for Automatic Enrollment in New 401(k) and 403(b) Plans

For plan years beginning after 12/31/2024, new 401(k) and 403(b) plans must include automatic enrollment provisions along with an automatic contribution increase feature. Governmental and church plans, SIMPLE plans, and businesses with 10 or fewer employees or certain new employers are exempt.

Increases to Catch-Up Contributions

For tax years beginning after 12/31/2024, catch-up contribution limits for 401(k), 403(b), and governmental 457(b) plans have increased for individuals who are age 60-63 to the greater of $10,000 or 150% of the standard catch-up amount for 2024.

Treatment of Student Loan Payments as Elective Deferrals for Matching Purposes

For plan years beginning after 12/31/2023, employers sponsoring a 401(k), 403(b), 457(b), or SIMPLE IRA may “match” qualified student loan payments with matching contributions to those plans.

Roth Treatment of Employer Contributions

For contributions made after 12/29/2022, employers may provide participants the option of receiving employer matching and nonelective contributions as Roth contributions.

Roth Treatment of Catch-Up Contributions

For tax years beginning after 12/31/2023, catch-up contributions for participants age 50 or greater to 401(k), 403(b), and governmental 457(b) plans must be made on a Roth basis, except in the case of participants with compensation of $145,000 or less.

Small Immediate Financial Incentives for Contributing to Retirement Plan

For plan years beginning after 12/31/2022, employers may now offer *de minimis* financial incentives to employees to encourage them to participate in and contribute to a 401(k) or 403(b) plan. Exactly what is considered a *de minimis* incentive is not defined in the legislation so additional guidance will be needed.

Emergency Personal Expense Distributions

For distributions made after 12/31/2023, plans may allow participants to take “Emergency Personal Expense Distributions” of up to $1,000 once per year in the case of unforeseeable or immediate financial needs related to personal or family emergencies. Such distributions would not be subject to the otherwise applicable 10% early distribution excise tax and must be repaid to the plan within three years.

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Increases in Contribution Limits for SIMPLE Plans

For plan years beginning after 12/31/2023, small employers that maintain SIMPLE plans may make additional employer contributions to employees of up to the lesser of 10% of compensation or $5,000, as adjusted. In addition, elective deferrals and catch-up contribution limits to such plans are increased by 10% for employers with 25 or fewer employees. Employers with more than 25 employees can allow for increased deferral limits to SIMPLE plans if the employer also increases its employer contribution by 1%.

Starter 401(k) and 403(b) Plans for Employers Without Retirement Plans

Effective for plan years beginning after 12/31/2023, a new plan design is established for employers that do not already have a 401(k) or 403(b) plan. A starter 401(k) or 403(b) plan must provide for auto-enrollment between 3% and 15% of compensation, unless otherwise elected.

Reduction in Period of Service Requirement for Long-Term, Part-Time Workers

The 2019 SECURE Act required eligibility for long-term, part-time employees after three consecutive years of at least 500 hours of employment. Under SECURE 2.0, the three-year requirement is reduced to two years effective for plan years beginning after 12/31/24. SECURE 2.0 also extends the long-term, part-time requirements to 403(b) plans.

Emergency Savings Accounts Linked to Individual Account Plans

For plan years beginning after 12/31/2023, defined contribution plans may offer an emergency savings account option to non-highly compensated employees to be funded solely by employee Roth deferrals. Participants must have the right to make monthly withdrawals from the account without fees for the first four withdrawals each year. Accounts cannot exceed $2,500.

Recovery of Retirement Plan Overpayments

Effective December 29, 2022, plan fiduciaries are permitted to not recoup plan overpayments made in error to retirees. Previously, a fiduciary's legal duties would require him/her to recoup such amounts, even though doing so could create a significant and unexpected hardship on a retiree who often would be unaware of the error.

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Reduction in Excise Tax on Failure to Take Required Minimum Distributions

For tax years beginning after 12/31/2022, the excise tax that applies if an individual fails to take a required minimum distribution is reduced from 50% to 25%.

Increased Limit on Mandatory Distributions

Plan sponsors previously were permitted to require distributions of small accounts in the form of a lump sum, if the balance were less than $1,000. If the balance were between $1,000 and $5,000, an employer could require a rollover to an IRA opened on behalf of a participant. Effective for mandatory distributions made after 12/31/2023, a retirement plan may transfer up to $7,000 to such an IRA.

Withdrawal From Retirement Plans for Individual Case of Domestic Abuse

Effective for distributions made after 12/31/2023, plans may permit participants who experience domestic abuse to withdraw the lesser of $10,000, as adjusted, or 50% of the participant's account. Such distributions will not be subject to the 10% early distribution excise tax.

Notices for Unenrolled Employees

Effective for plan years beginning after 12/31/2022, employers are no longer required to provide unnecessary notices to employees who elect not to participate in a defined contribution plan. Instead, employers need to continue to only provide an annual reminder notice regarding election deadlines to unenrolled participants.

New Rules for Federally Declared Disasters

With respect to disasters occurring after 01/25/2021, qualified plans and 403(b) plans may permit distributions of up to $22,000 to those participants living in a federally declared disaster area within 180 days after the disaster without being subject to the 10% excise tax on early distributions. Plans may also increase the maximum loan amount to $100,000 or 100% of a participant's vested balance for such affected participants.

Replacing SIMPLE Retirement Accounts with 401(k) Plans Mid-Year

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For plan years beginning after 12/31/2023, employers may replace a SIMPLE IRA plan with a SIMPLE 401(k) or other 401(k) plan that requires employer contributions during a plan year. Previously this had not been permitted.

Requirement to Provide Paper Statements

For plan years beginning after 12/31/2025, paper statements must be provided at least once annually to defined contribution plan participants. The other three quarterly statements may be provided electronically, so long as ERISA's electronic distribution guidelines are followed. For defined benefit plans, this statement must be provided at least once every three years.

SIMPLE IRA and SEP Roth Contributions

For plan years beginning after 12/31/2022, SIMPLE IRAs and simplified employee pension plans ("SEPs") may permit Roth contributions.

403(b) Hardship Withdrawals

For plan years beginning after 12/31/2023, the hardship distribution rules that apply to 403(b) plans shall conform to the current 401(k) hardship rules by allowing additional amounts to be available for such distributions and not requiring 403(b) plan participants to take all available loans before receiving a hardship distribution.

If you have any questions regarding these or other changes made by SECURE 2.0, or if you would like to discuss implementation of the required or optional provisions described above, please contact any of our employee benefits professionals.

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