SECURE 2.0: Recent Changes to Retirement Plan Laws

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While most of us were busy preparing for the holidays and making New Year's resolutions, Congress and President Biden were busy rolling out new retirement plan legislation. On Dec. 22 and Dec. 23, respectively, the Senate and House passed the SECURE 2.0 Act of 2022 (SECURE 2.0) as part of its omnibus spending bill, the 2023 Consolidated Appropriations Act (CAA). President Biden signed the CAA--including SECURE 2.0--into law on Dec. 29, 2022.

SECURE 2.0 builds on changes made by the SECURE Act of 2019, and continues Congress' attempts to make retirement plans more accessible to employees and less complicated for employers to establish and administer.

Below are a few key takeaways from SECURE 2.0.

Effective January 1, 2023

- The age retirement account holders have to start taking Required Minimum Distributions (RMDs) has increased from 72 to 73. Starting in 2033, this age will increase again to 75.
- Additionally, in the event a retirement account holder fails to take an RMD as required, the penalty has been reduced from 50% to 25% of the RMD amount (and down to 10% if corrected in a timely manner for Individual Retirement Accounts (IRAs)). This change is effective for plan years beginning on or after December 29, 2022.
- If a participant in a 401(k), 403(b), or governmental 457(b) plan elects it, an employer is permitted make matching or non-elective contributions on a Roth basis, if permitted by the plan. Previously, employers were not allowed to provide matching contributions on a Roth basis in these plans.

Effective January 1, 2024

- Roth accounts in 401(k), 403(b), or governmental 457(b) plans will be exempt from RMD requirements.
- A plan will be permitted to increase its mandatory cashout limit from $5,000 to $7,000.
- Sponsors of 401(k) and 403(b) plans will be permitted to provide employer-matching contributions to the plan for employees' qualified student loan repayments outside the plan.

- Employers may amend their plan to provide for emergency savings accounts for non-highly compensated employees. In addition, employers may amend their plans to permit employees to withdraw up to $1000 per year from their plan accounts for certain emergencies, without incurring the 10% penalty for early distributions. Employees are permitted to repay to the plan amounts withdrawn under this permission, if such repayment occurs within three years of the withdrawal.

Effective January 1, 2025

- Catch-up contributions will increase – participants between age 60 and 63 in non-Savings Incentive Match Plan for Employees (SIMPLE) IRA plans will see an increase in catch-up contributions from $7,500 to $10,000 (or 150% of the regular catch-up amount, whichever is greater). The $10,000 amount will be indexed for inflation.
- Most new 401(k) and 403(b) plans established after the enactment of SECURE 2.0 will be required to provide for automatic enrollment of participants upon becoming eligible (with an option to opt out). Participants who are auto-enrolled must begin with a contribution amount between 3% and 10%, with the amount increasing by 1% each year until it reaches at least 10% but no more than 15%. Previously existing plans, small business (i.e., those with 10 or fewer employees) plans, new business (i.e., those in existence less than three years) plans, church plans and governmental plans are exempt.
- Most defined contribution plans that permit employee elective deferrals will be required to allow part-time employees who completed 500 hours in the previous two consecutive years to enroll. This is a reduction from the three consecutive years of service threshold for part-time employees under the SECURE Act of 2019.

Overall, SECURE 2.0 contains changes that range from minor technical changes to significant policy shifts, all of which are designed to expand participation and increase savings in retirement accounts. In addition to those listed above, there are many more provisions in SECURE 2.0 that will affect retirement plan sponsors and participants, including an expansion of the types of errors that can be corrected under the IRS Employee Plans Compliance Resolution System (EPCRS), creation of a database to help participants locate “lost” retirement accounts, and more flexibility for employers dealing with retirement plan overpayments. More guidance is sure to come. If you have any questions or need help navigating these changes, contact one of our ERISA & Employee Benefits attorneys.

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