HAPPY NEW YEAR! - EMPLOYEE BENEFIT PLAN CHANGES FOR 2026

CAPABILITIES

Employee Benefits & Executive Compensation

Advisory
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2026 is upon us! As always, the new year brings changes and new requirements to the employee benefit plan arena. In this newsletter we have summarized some key changes to be aware of and amendments that may be required for retirement plans and welfare plans in 2026.

- ***Roth Catch-Up Contributions*** – It's time – postponed from its original effective date, the Roth catch-up contribution requirement from the SECURE 2.0 Act goes into effect in 2026. At a high level, the Roth catch-up rules generally require that a retirement plan participant who elects to make catch-up contributions to their employer's qualified retirement plan and who had FICA wages from the employer that sponsors the plan in excess of the applicable limit for the prior year must have those catch-up contributions made as Roth contributions. The applicable limit for 2025 is $150,000. Accordingly, a participant who had FICA wages in excess of $150,000 in 2025, must have his or her catch-up contributions for 2026 made as Roth contributions. Many plan sponsors and their vendors have been working overtime to implement the Roth catch-up requirement to go-live in 2026 – however, if this summary has caught you off guard, consider reaching out to your plan vendors to determine what steps may have already been taken or still need to be taken to implement it.
- ***Dependent Care FSA Limit Increase*** – As we previously wrote about (link here), beginning in 2026, the maximum federal limit for dependent care flexible spending account (FSA) contributions increased from $5,000 to $7,500 (or from $2,500 to $3,750 for married filing separately). This limit had gone unchanged since 1986 and, in our experience, most dependent care FSA documents hardwired in the prior dollar limit, rather than including language that automatically increases the limit under the plan with adjustments in the federal limit. If you increased the limit in practice under your dependent care FSA plan, but did not adopt a plan

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amendment to reflect the change, your plan document may not align with this change. Consider consulting with your FSA document provider if you implemented this change and did not adopt a plan amendment.

- ***CARES, SECURE, and SECURE 2.0 Acts and Amendments*** – Retirement plan sponsors with limited exceptions (e.g., governmental plans, collectively bargained plans, tax-exempt 457 (b) plans (see below)) are required to amend their plans for the CARES Act (remember that one?), SECURE Act and SECURE 2.0 Act (the "Acts") by no later than December 31, 2026. Regardless of whether you utilize a pre-approved or individually designed plan document, you can expect that your plan provider will be reaching out to you in 2026 to start that process (if they have not done so already). In anticipation, you should consider gathering documentation from your vendors that you may have submitted or received on any discretionary provisions under the Acts that you have already implemented so that you have the information available when that conversation starts.

As a reminder, non-governmental 457(b) plans were required to be amended for SECURE 2.0 by no later than December 31, 2025. If you are at tax-exempt entity and did not amend your 457(b) plan for SECURE 2.0 (or otherwise restate onto a SECURE 2.0 compliant document), consider contacting your plan document provider as soon as practicable to determine if any steps should be taken now.

- ***State-Mandated Retirement Plans*** – There has been a recent movement in some states to mandate that employers with employees in those states implement retirement programs for their employees or facilitate participation in a state retirement program. States with such mandates may also require registration or other formal confirmation of an employer's retirement program. States currently with retirement program requirements include California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Vermont, and Virginia. Other states have similar rules in the works. If you have employees in any of these states, consideration should be given as to whether applicable state law requires you to take any action to comply with these rules.
- ***It's a New Year - Consider a Plan Governance Check-Up*** – Employers often assign responsibility over the administration and investment matters related to their retirement and welfare benefit programs to benefit committee(s) or specific employees or departments. However, that delegation may not always be properly documented, if at all, or the documentation reflecting that

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delegation (e.g., board resolutions, charters, etc.) may need to be updated. Even where the delegation is properly documented, there may be a benefit to reviewing the practices of the committee or other delegated individual(s) to see whether any changes to the practices are appropriate (e.g., when was ERISA fiduciary training last performed? When was a request for proposal last done for the various plan vendors?) Given the heightened fiduciary obligations under ERISA and the prevalence of ERISA fiduciary breach litigation, going into the new year, you may want to consider looking inward and reviewing your governance structure and committee practices to determine if any updated documentation or changes in practice are appropriate.