

SECURE 2.0 Guidance Provides Retirement Plans Much Needed Clarity

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The IRS recently issued Notice 2024-2, which provides Q&A guidance on many provisions of the SECURE 2.0 Act, which had left employers and practitioners asking questions. We previously summarized several of the key changes made under SECURE 2.0 Act here. Clarifications made by the recent guidance include, among other things, the following, which generally were the cause of the most questions:

- **401(k) Mandatory Automatic Enrollment** (plan years beginning after 12/31/24): The Notice clarifies that 401(k) plans established prior to SECURE 2.0 (December 29, 2022) are exempt from the requirement to implement automatic enrollment processes, and provides guidance as to the consequences of certain merger activity on the application of the exemption and new rule.
- **Employer Roth Contributions** (permitted after 12/29/22): The Notice provides clarity as to how to implement the new rule allowing employer contributions to be treated as Roth contributions, including that existing rules that apply to Roth elective deferrals will apply, that employees must be fully vested in their employer matching or nonelective contributions to be eligible, that the new feature can be added to a plan that already provides for Roth elective deferrals, and that a Roth employer contribution account is eligible for rollover to another Roth account, including a Roth IRA.
- **Distributions for Terminal Illness** (permitted after 12/29/22): The Notice clarifies that the new exception to the 10% additional tax on early

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distributions will not apply in the case of terminally ill participants, but it does not provide for a new distribution event, or exception to the distribution restrictions under 401(k) and 403(b). Rather, participants receiving distributions due to terminal illness will need to separately qualify for an in-service distribution (e.g., in the case of hardship or disability).

- **Plan Amendments:** The Notice provides a one-year extension on the deadline for amendments that reflect changes made by the CARES Act, SECURE Act, and SECURE 2.0. The new deadline for amendments related to both mandatory and discretionary changes is now December 31, 2026 (December 31, 2028, for collectively bargained plans, and December 31, 2029, for governmental plans).

If you have any questions about these or other clarifications provided by the IRS Notice or any other changes made by SECURE 2.0, please contact your employee benefits professional.