SECURE Act 2.0 Makes Significant Changes to 401 (k) and 403(b) Plans

Labor & Employment Law Update

By Kelly Haab-Tallitsch on January 17, 2023

The long-awaited SECURE 2.0 Act of 2022 ("SECURE 2.0"), containing sweeping changes to workplace retirement plans, was signed into law on December 29, 2022 as part of the Consolidated Appropriations Act of 2023. SECURE 2.0 builds on the revisions to retirement plan rules enacted by the Setting Every Community Up for Retirement Enhancement Act of 2019 (the original SECURE Act), and makes even more aggressive changes.

SECURE 2.0 includes more than 100 provisions affecting private and public employers as to all types of tax-qualified retirement plans. This article highlights the most significant changes impacting 401(k) and 403(b) plans.

Effective in 2023:

INCREASED AGE FOR REQUIRED MINIMUM DISTRIBUTIONS (RMDS)

Previously, retirees were required to begin taking distributions from a retirement plan after they reach age 72. Beginning January 1, 2023, SECURE 2.0 increases this age to 73 (and again to 75 beginning on January 1, 2033). Further, SECURE 2.0 cuts the tax penalties for failing to take RMDs in half and, beginning January 1, 2024, eliminates the requirement to take RMDs from Roth accounts.

Effective in 2024:

NEW LIMIT FOR AUTOMATIC DISTRIBUTIONS

Under current law, plans may automatically distribute accounts of less than $5,000 to former participants. Automatic distributions greater than $1,000 must be rolled into an IRA. SECURE 2.0 increases the limit for automatic distributions from $5,000 to $7,000, beginning with distributions made on January 1, 2024 or later.

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EMPLOYER MATCH FOR STUDENT LOAN PAYMENTS

Effective for plan years beginning January 1, 2024 and after, employers will be able to make matching contributions to a defined contribution plan, such as a 401(k) or 403(b) plan, by matching employees' student loan repayments. The match is limited to applicable deferral and contribution limits. SECURE 2.0 allows an employer to rely on an employee's own annual certification of the amount of qualifying student loan payments, and addresses important questions related to how the employer match on student loan payments should be treated for nondiscrimination purposes.

Effective in 2025:

INCREASED CATCH-UP CONTRIBUTION LIMIT.

Under current law, plan participants age 50 or older may contribute an additional amount over the annual maximum in "catch-up contributions" each year. Beginning in 2025, the catch-up contribution limit for participants age 60 to 63 is increased to at least 150% of the regular indexed catch-up contribution amount.

LOWER ELIGIBILITY FOR LONG-TERM PART-TIME WORKERS

The original SECURE Act required employers to allow part-time employees with at least 1,000 hours of service in a 12-month period or 500 hours of service in each of 3 consecutive years to participate in the employer's 401(k) plan (excluding collectively bargained plans). SECURE 2.0 reduces the 3 year rule to 2 years and extends the requirement to 403(b) plans for plan years beginning on or after January 1 , 2025.

MANDATORY AUTOMATIC ENROLLMENT IN NEW PLANS

Most new 401(k) and 403(b) plans established after December 29, 2022, will be required to automatically enroll participants upon becoming eligible and automatically escalate their contributions each year, beginning January 1, 2025. The initial automatic deferral amount must be between 3% and 10% of compensation, increasing by 1% each year to a maximum of at least 10%, but no more than 15% of compensation.

SECURE 2.0 also contains a number of provisions intended to ease the administrative burden on employers, including streamlined correction procedures for many types of plan errors and the creation of a national online searchable database to enable employers to locate missing plan participants.

Next Steps for Employers

Employers should consult with their retirement plan advisors to determine which changes apply to their plans and what action may be required. Plan amendments are not required until the last day of the 2025 plan year (i.e., December 31, 2025 for calendar year plans), as long as the plan is operated in compliance with applicable changes.

Continue to follow Amundsen Davis's Labor & Employment Law Update for more details on SECURE 2.0, including upcoming articles on changes to hardship, emergency, and other special withdrawal rules, as well as changes specific to pension plans and Employee Stock Ownership Plans (ESOPs).