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Single Employer Benefits & Pension Alert

SECURE 2.0 ACT: IMPACT ON EMPLOYER-PROVIDED RETIREMENT PLANS | FEBRUARY 2023

The SECURE 2.0 Act of 2022 (the "Act"), was signed into law on December 29, 2022, as part of the 2022 year-end spending bill. The Act includes significant changes to retirement plans and builds on the original SECURE Act that was enacted in 2019. The following is a summary of some of the changes impacting employer-provided retirement plans. Some changes are effective immediately and some changes are not effective until later years.

A. *Required Minimum Distribution Changes*

- The Act increases the age at which required minimum distributions ("RMDs") must begin, from 72 to 73.
  - This change is effective for RMDs required to be made after December 31, 2022, with respect to individuals who turn 72 after such date.
- The Act also increases the age at which RMDs must begin, to age 75, beginning January 1, 2033.
  - In the case of an individual who attains age 73 before January 1, 2033, the RMD age will be 73, but in the case of an individual who attains age 74 after December 31, 2032, the RMD age will be 75.
- Effective for taxable years beginning after December 29, 2022, the Act reduces the penalty for missed RMDs from 50% to 25% of the missed RMD amount, and to 10% if the failure is corrected in a timely manner.
- Effective for taxable years beginning after December 31, 2023, the Act exempts Roth accounts in employer sponsored retirement plans from the RMD requirements during a participant's lifetime (Roth IRAs were already not subject to the RMD requirements while the owner of the Roth IRA was alive).
- Effective January 1, 2024, the Act allows for a surviving spouse to elect to be treated as the deceased participant for the purposes of the RMD rules.

B. *Qualified Federally Declared Disasters*

- The Act establishes permanent rules effective for federally declared disasters occurring on or after January 26, 2021.
  - A Plan may permit an affected individual to withdraw up to $22,000 in response to federally declared disasters. These withdrawals would not be subject to the 10% early distribution tax and would be taken into account as income over 3 years, unless a participant elects otherwise. Distributions can be repaid to the plan within 3 years.
  - A Plan may permit an individual affected by a federally declared disaster to recontribute amounts that were distributed to purchase a principal residence prior to the disaster.

- An employer may permit an individual affected by a federally declared disaster to take a loan from a plan in a larger amount and with longer payment terms than otherwise permitted.

C. *Additional Benefits Permitted*

- Pursuant to the Act, an employer may now allow employees to elect to receive matching or non-elective contributions as Roth contributions.
- Effective for plan years beginning after December 29, 2022, employers are permitted to offer de minimis financial incentives to encourage employees to make contributions to 401(k) or 403(b) plans. Notably, the Act does not define what constitutes a de minimis incentive.
- Effective for plan years beginning after December 31, 2023, the Act establishes that employers will be able to match employee repayment of student loans with matching payments to a retirement account. The intent is to allow indebted employees to still save for retirement while paying off their student debt. This applies to 401(k) plans, 403(b) plans, SIMPLE IRAs and governmental 457(b) plans.

D. *Hardship Distributions*

- Effective for plan years beginning after December 29, 2022, employers are permitted to rely on self-certification from employees asserting that they qualify for the requested hardship distribution.

E. *Elimination of Early Distribution Penalty*

- Effective for distributions made after December 29, 2022, individuals suffering from terminal illness who withdraw retirement funds will not be subject to the 10% early distribution penalty.
- Effective for distributions made after December 31, 2023, the Act creates a new exception to the 10% early distribution penalty if the distribution is used to satisfy an unforeseeable or immediate financial need related to a "personal or family emergency expense." The new exception permits only one such distribution per calendar year, of up to $1,000, and the participant has the option to repay this distribution within three years. If the distribution is not repaid during the 3-year repayment period, no further emergency distribution will be allowed during that time period.
- Effective for distributions occurring after December 31, 2023, domestic abuse survivors will not be subject to the 10% early distribution tax. Domestic abuse survivor participants may self-certify that they have experienced domestic abuse and withdraw the lesser of $10,000 or 50% of their accounts.

F. *Changes to Correction Procedures*

- The Act significantly expands the scope of the Employee Plans Compliance Resolution System (EPCRS), which is a correction program initially implemented by the IRS many years ago. Under the Act, tax-qualified plans can self-correct an "eligible inadvertent failure" at any time, unless (i) the IRS has identified the failure before the plan began to make efforts to self-correct, or (ii) the self-correction is not completed in a reasonable period of time after the failure was discovered.
- The Act provides fiduciaries of tax-qualified retirement plans with discretion as to whether to seek recoupment of overpayments mistakenly made to participants or beneficiaries. Previously, fiduciaries were generally required to seek recoupment of overpayments.

G. *Additional Changes effective in 2024*

- Effective for taxable years beginning after December 31, 2023, the Act requires catch-up contributions made by employees who earned more than $145,000 in the prior year to be Roth (i.e., post-tax) contributions. An employee earning less than $145,000 can choose if catch-up contributions are made as Roth or pre-tax contributions.
- Effective for plan years beginning after December 31, 2023, employers sponsoring a defined contribution plan can provide for an emergency savings account, which would allow non-highly compensated participants to save up to $2,500 (or a lower amount established by the plan sponsor) on an after-tax basis. Participants would be permitted to take at least one withdrawal per month, and the first 4 withdrawals must not be subjected to fees solely on the basis of such a withdrawal.
- Effective for distributions occurring after December 31, 2023, the Act increases the upper limit of involuntary cash-out distributions from $5,000 to $7,000.
- The Act directs the Department of Labor to create, no later than two years after the enactment of the Act (so, by the end of 2024) a retirement savings lost and found database for Americans' retirement accounts.

H. *Additional Changes effective in 2025*

- The SECURE Act of 2019 included a requirement that part-time employees with at least three consecutive years of at least 500 hours of service be eligible to make deferrals under a 401(k) plan. The Act reduces the service requirement for part-time workers to two years, effective for plan years beginning after December 31, 2024.
- With limited exceptions, companies adopting new 401(k) and 403(b) plans will be required to automatically enroll eligible employees (employees will have the option to opt-out) at an initial contribution rate of at least 3% and no more than 10%. The contribution rate must be increased by 1% annually, up to a maximum established under the plan, of at least 10% and no more than 15%.
- Effective for taxable years beginning after December 31, 2024, the maximum annual catch-up contribution for employees age 60 through age 63 shall be increased to the greater of $10,000, or 150% of the regular catch-up amount for 2024. This maximum will be indexed for inflation in future years.

I. *Next Steps*

Plan amendments made pursuant to the Act can be adopted on or before the last day of the first plan year beginning on or after January 1, 2025 (January 1, 2027 for governmental plans), provided the plan operates according to such amendments as of the effective date of the requirement or amendment in question. To align the deadlines, the Act pushed back the deadline for plan amendments under the SECURE Act of 2019, the CARES Act, and the Taxpayer Certainty and Disaster Relief Act of 2020 to the last day of the first plan year beginning on or after January 1, 2025 (or 2027 for governmental plans).

This alert is intended to highlight some of the most significant qualified retirement plan changes made by the Act. However there are many additional changes that this alert does not address. Please contact us if you would like to discuss any of the Act's changes.

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This edition of the Single Employer Benefits & Pension Alert was written by the Single Employer Benefits & Pension practice at Reid and Riege, P.C. The practice works closely with clients to design and draft tax-qualified and nonqualified retirement plans.

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