Winter 2023 – Benefit Insights Newsletter

SECURE 2.0 is a GO!

In 2019, the Setting Every Community Up for Retirement Enhancement (SECURE) Act increased the Required Minimum Distribution (RMD) age for retirement plan participants from age 70 1/2 to 72. Additionally, it introduced opportunities for Long Term Part Time (LTPT) employees to make deferral contributions to retirement plans in situations where they have not yet met the plan's eligibility requirements. An updated version of the SECURE Act—the SECURE 2.0 Act of 2022—was signed by President Biden on December 29, 2022, as part of the Consolidated Appropriations Act of 2023. While this omnibus spending bill covers a variety of topics, changes to qualified retirement plans were included to encourage earlier plan participation and a better retirement outcome. SECURE 2.0 modifies the original RMD and LTPT provisions while introducing new rules. Here is what lies ahead:

Effective as of the date of enactment:

- Distributions to terminally ill participants will be exempt from the 10% early withdrawal penalty tax.
- Plan sponsors of a 401(k), 403(b) or 457(b) plan may permit participants to elect their company matching and non-elective contributions be treated as Roth contributions.

Effective for Plan years beginning on or after 1/1/23:

- Required Minimum Distribution (RMD) age increases from 72 to 73.
  - If a participant turned 72 prior to 1/1/23 and they have begun receiving their RMD, they will continue to receive their RMD in 2023.
  - For participants who turn 73 in 2023, their 1st RMD is due by 12/31/23 or they may opt to delay it until 4/1/24. If they choose the latter, they will take both their 1st and 2nd payment in 2024.
  - The penalty assessed to the participant for not taking an RMD timely is reduced from 50% of the amount not distributed to 25%.
  - The age increases further to 75 in 2033.

Effective for Plan years beginning on or after 1/1/24:

- RMDs will not be required from Roth 401k or Roth 403(b) balances.

  - Currently Roth IRAs are exempt from RMDs but Roth balances in qualified plans are included in the calculation of the required amount to be distributed. Calculations for 2023 RMDs will include Roth 401(k) balances but they will be excluded from future calculations.
- Catch-up contributions to qualified retirement plans must be Roth deferrals.
  - This does not apply to participants with compensation under $145,000 in the prior year.
- Matching contributions on student loan repayments.
  - Sponsors of a 401(k) Plan, 403(b) Plan or SIMPLE IRA will be able to match student loan repayments made by employees. This also applies to governmental employers who sponsor a 457(b) Plan.
  - The employee will make student loan payments on the loan that was taken to pay for qualified higher education expenses and the employer will be permitted to deposit a matching contribution into the qualified plan on their behalf.
- Hardship rules for 403(b) plans will conform to the rules that apply to 401(k) Plans.
  - In addition to employee contributions being available as a hardship distribution, earnings on those contributions will be available as well.
- Distributions will be available for domestic abuse survivors.
  - The available amount will be the lesser of $10,000 or 50% of the participant’s account and will be exempt from the 10% early withdrawal penalty tax.
  - The amount will be eligible to be repaid to the plan over 3 years.
- Emergency distributions up to $1,000 will be available.
  - One distribution per year for unforeseeable or immediate financial needs relating to personal or family emergency expenses.
  - The distribution will be exempt from the 10% early withdrawal penalty tax.
  - The amount will be eligible to be repaid within 3 years.
  - No additional emergency distribution during the 3-year period will be available unless repayment has occurred.
- Long Term Part Time (LTPT) Employees will be eligible to contribute elective deferrals to their employers’ 401(k) Plans.
  - LTPT Employees are those who have worked at least 500 hours a year for three consecutive years.
  - Plan Sponsors may opt to offer matching contributions (subject to vesting schedule).
  - Hours of service prior to 2021 are disregarded for both eligibility and vesting.
  - This provision does not apply to collectively bargained plans.

Effective for Plan years beginning on or after 1/1/25:

- Long Term Part Time (LTPT) Employees will be eligible to contribute elective deferrals after TWO consecutive years of working 500 hours instead of three years.
  - This provision will now apply to both 401(k) Plans and ERISA 403(b) Plans.
  - Hours of service prior to 2023 are disregarded for 403(b) Plans.
- Increased Catch-Up Contributions.
  - Participants aged 60 to 63 will be eligible to defer larger catch-up contributions.
- Required automatic enrollment provisions.
  - New 401(k) and 403(b) plans must include automatic enrollment provisions where the default employee contribution rate is at least 3% but not more than 10%. Each following year, the amount is increased by 1% until it reaches at least 10% but not more than 15%.
  - This provision does not apply to businesses with 10 or fewer employees or new companies in business less than 3 years.
  - Plans that exist as of December 29, 2022 (date of enactment) are grandfathered and,

therefore, are not required to include automatic enrollment provisions.
  - Plans that are established in 2023 and 2024 should pay attention to this provision, though, since the provision may apply to them for 2025.

Is it already time to complete another year-end data request?

When Plan Sponsors are asked to provide company and employee census information for a recent plan year, the details being collected affect the contributions that must be calculated and funded as well as which compliance tests the plan must satisfy. The same questions are asked year after year because changes in the company affect the plan a great deal. Information collected may include:

Employee census: Details about all employees on payroll must be provided, whether they are full time, part time or only worked a few weeks.

- Employee information allows your retirement plan professional to determine who met the plan eligibility requirements, who is required to be included in compliance testing and who is eligible to receive employer contributions being funded for the plan year.
- If your payroll information is collected per payroll, you may be asked to confirm its accuracy at year end to be sure that no payrolls were missed and that, for calendar year compensation years, the amounts tie to the Form W-3.
- With the new rules for Long Term Part Time (LTPT) employees, it is very important to track hours worked for part time employees to determine who falls into this category.
- If you are an owner only plan (sole proprietor and spouse, or partnership and spouses of partners), be sure to reach out to your retirement plan professional if you are considering hiring employees. Depending on the plan provisions, even seasonal or short-term hires could have an unexpected impact.

Ownership % and other businesses owned by those owners: Not only does it matter who owns a part of your business, how much they own makes a difference as well.

- Ownership of more than 5% means they are a Highly Compensated Employee (HCE) for compliance testing purposes, and this may affect the contribution amount they are able to receive. If the spouse of the owner is also employed, the ownership attribution applies to them as well. This applies to parents, children, and grandparents of 5% owners.
- If the owners of your company have ownership in another company, it could be a controlled group or affiliated service group situation and the employees of that other company may need to be included in the compliance testing for your qualified plan.
- Changes in ownership should be communicated as they are being planned, rather than after the change takes effect. For example, if the owners plan to retire at year end with their children taking over, the compliance testing for the plan could be affected by the change in ages of the HCEs. There are ways to make this a smooth transition with plan provision changes if discussed in advance.

ERISA fidelity bond: The amount in place for your plan at year end is requested to determine if it is sufficient or needs to be increased.

- The amount of the bond is reported on the Form 5500 filed for the plan year and the required amount is 10% of plan assets. Certain exceptions apply.
- For the 1st year of the plan, the amount of coverage is to be based on 10% of the expected contribution amount for the year.

Stay tuned! Secure 2.0 Act of 2022 includes some action items that may produce beneficial changes in the future.

Within 18 months:

- **Effectiveness of notice provided for eligible rollover distributions:** A 402(f) notice, often referred to as a Special Tax Notice, must be provided to the recipient of a distribution that is eligible for rollover. The notice must contain required language regarding rollover options and the tax implications that may apply. The Government Accountability Office must issue a report to Congress on the effectiveness of these notices.

No later than two (2) years after the date of enactment:

- **Retirement Savings Lost and Found:** A national online database will be created to help connect former participants who are trying to reach a prior employer with Plan Sponsors who are trying to reach them regarding a remaining account balance.
- **Consolidation of defined contribution plan notices:** Regulations are to be amended so that the individual notices currently provided to participants by the plan can be consolidated.

Within five (5) years:

- **Report on pooled employer plans:** The Department of Labor (DOL) Secretary must conduct a study on the new and growing pooled employer plan industry and issue a report within five years. Subsequent reports will be completed every five years after.

Upcoming Compliance Deadlines for Calendar-Year Plans

IRS Form 1099-R Copy A – Deadline to submit 1099-R Copy A to the IRS for participants and beneficiaries who received a distribution or a deemed distribution during the prior plan year. This deadline applies to scannable paper filings. For electronic filings, the due date is March 31, 2023.
ADP/ACP Corrections – Deadline for processing corrective distributions for failed ADP/ACP tests without a 10% excise tax for plans without an Eligible Automatic Contribution Arrangement (EACA).
Employer Contributions – Deadline for contributing employer contributions for amounts to be deducted on 2022 S-corporation and partnership returns for filers with a calendar fiscal year (unless extended).

Required Minimum Distributions – Normal deadline to distribute a Required Minimum Distribution (RMD) for participants who attained age 72 during 2022.

Excess Deferral Correction – Deadline to distribute salary deferral contributions plus related earnings to any participants who exceeded the IRS 402(g) limit on salary deferrals. The limits for 2022 were $20,500 or $27,000 for those aged 50 and over if the plan allowed for catch-up contributions.

Employer Contributions – Deadline for contributing employer contributions for amounts to be deducted on 2022 C-corporation and sole proprietor returns for filers with a calendar fiscal year (unless extended).

Top of Page