The Secure Act 2.0 Signed into Law

Key Provisions & Dates Affecting Retirement Plans

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After months of deliberation, Congress passed the Securing a Strong Retirement Act of 2022 (SECURE ACT 2.0) on December 29, 2022.

All stakeholders including individuals, plan participants, plan sponsors, retirees, and financial professionals now have certainty on what the bill contains and can begin planning for and implementing required changes.

Below are several key provisions and how they may impact retirement plan sponsors and their participants. Provisions are organized by the calendar year they are scheduled to go into effect.

Effective 2023

Small Business Tax Credits

Starting in 2023, SECURE 2.0 further expands the small employer start-up tax credit originally introduced in the SECURE Act. For employers with up to 50 employees, SECURE 2.0 *increases the tax credit to 100% of qualified start-up costs* and provides for an additional credit of up to $1,000 per employee, based on eligible employer contributions for the first five years of the plan. The credit begins phasing out for employers with between 51 and 100 employees.

Roth Contributions

Employers can now choose to allow participants to receive their *employer contributions as Roth*. Such contributions would be included in the participant's taxable wage income for the year and must be immediately vested at 100%. The employer tax deduction is unaffected.

SIMPLE and Simplified Employee Pension (SEP) Plans may begin offering Roth options.

Rewards for Plan Participation

Employers may now offer small incentives, such as gift cards, to encourage plan participation. The parameters surrounding the incentives, however, are not well defined at this stage.

Employee Plans Compliance Resolution System (EPCRS)

The *Employee Plans Compliance Resolution System* (EPCRS), the self-correction program of the IRS, allows more error types to be self-corrected without an IRS filing, and employers are no longer required to attempt to recoup certain overpayments made to participants.

Required Minimum Distributions

The SECURE Act, passed in 2020, increased the age that required minimum distributions (RMDs) must begin from age 70 to 72. SECURE Act 2.0 has moved the age at which RMDs must begin to 73, and to 75 beginning in 2033.

Qualified Longevity Annuity Contracts (QLACs)

The dollar limit on QLAC premiums is increasing from $145,000 to $200,000 beginning on January 1, 2023, and the provision limiting premiums to 25% of an individual's retirement account balance has been eliminated.

Qualified Charitable Distribution

The qualified charitable distribution (QCD) has been expanded so that those age 70 ½ and older may elect to make, as part of their QCD, a one-time gift of up to $50,000 (adjusted annually for inflation) to a charitable remainder unitrust, charitable remainder annuity trust, or charitable gift annuity.

Federally Declared Disaster Relief

This section is backdated to disasters occurring on or before 1/26/21. The provision allows for distributions up to $22,000 to be exempt from the 10% federal penalty for both employer plans and IRAs. Where the amount is taken as income, it can be spread over three tax years and the individual may also choose to repay that amount over the same three-year period. Any taxes would be refunded.

Effective 2024

Catch-Up Contribution Modifications

Catch-up contributions for those with wages of $145,000 or greater will be treated as Roth, meaning they will be available solely as after-tax contributions. *If the plan sponsor does not offer a Roth option in their Plan*, employees with wages over $145,000 will not be able to make catch-up contributions.

Student Loan Borrowers

One of the most frequently cited obstacles to younger employees beginning to save for retirement is the need to make payments on their student loans. For employers wishing to attract and retain new college graduates, SECURE 2.0 offers the ability to create a provision in the retirement plan to make "matching" employer contributions based on a predetermined formula related to a participants' student loan payments. The *employer match contribution would be made on a pre-tax basis* into the participant's retirement account.

Emergency Savings Accounts

The Secure Act 2.0 allows employers to offer an emergency savings account (ESA) in conjunction with their defined contribution retirement plans. This new "side-along" account would protect the principal and allow up to four withdrawals a year without penalty, fees, or taxation. Contributions would be capped at $2,500, or 3% of the employee's pay—although the plan sponsor could impose a lower limit. Account balances cannot exceed $2,500, and excess contributions would roll from the emergency savings account directly into the retirement plan. These contributions would receive no tax preference.

Exception for Emergency Funds and Unforeseeable Expenses

Regardless of whether a plan sponsor chooses to adopt an ESA (mentioned prior in this article), Secure 2.0 creates an exception to the 10% early withdrawal penalty for withdrawals prior to age 59 ½. Participants may withdraw up to $1,000 from a retirement account for an unforeseeable financial need relating to personal or family expenses. The participant could repay the amount within three years. If it was not repaid, it would be treated as a taxable distribution. *Only one such distribution could be made in any three-year period* unless the amount was repaid.

Starter K Plans

Employers that do not currently offer a 401(k) or 403(b) plan may offer a starter plan for employee contributions only. Such plans would require automatic employee enrollment with a contribution level between 3% and 15% of compensation. The annual employee deferral limits match IRA limits. These plans are not subject to top-heavy or discrimination testing.

401(k) Roth Distribution Requirements

Beginning in 2024, the rules surrounding distributions from Roth 401(k) accounts will match IRA rules, and there will no longer be a requirement that RMDs be taken from Roth funds contained in employer sponsored plans.

Higher Forced Rollover Limits

The involuntary IRA rollover limit will increase from $5,000 to $7,000 for distributions made after December 31, 2023.

Effective 2025

Automatic Enrollment

Under the 2019 SECURE Act, 401(k) plans were permitted, but not required, to have automatic enrollment policies. SECURE Act 2.0 goes further. It requires new 401(k) plans to utilize automatic enrollment. The initial default rate must be between 3% and 10% and include auto-escalation of 1% up to at least 10% but not more than 15%. Employees may still opt out or alter the defaults. Companies that are less than 3 years old or employ less than 10 people are exempt from this provision.

Automatic Portability Transactions

To discourage individuals from inadvertently cashing out retirement assets as they change jobs, Secure Act 2.0 allows plan sponsors to offer automatic portability services. This enables the automatic transfer of a participant's low balance retirement account to their new employer's plan rather than simply sending a check directly to the participant.

Enhanced Catch-Up Contribution

Currently, employees aged 50 and older can contribute an additional $7,500 to 401(k) and 403(b) plans. SECURE Act 2.0 increases that amount to $10,000 for employees ages 60 through 63 beginning in 2025.

Lost and Found Database

The Department of Labor is directed to create a "Lost and Found" database which will enable individuals with money in a retirement plan to search contract information for plan sponsors.

529 (College Savings) Accounts

Under SECURE 2.0, 529 plan assets will be eligible for rollover into a Roth IRA on behalf of the beneficiary. The funds will be subject to annual Roth contribution limits, and the lifetime limit for such transfers is capped at $35,000. The 529 account must be open for at least 15 years for the assets to be eligible. The rollovers will be treated as contributions in the year in which they are made.

Effective 2027

Saver's Match

Lower-income employees will be eligible to receive a federal match of up to $2,000 per year to be deposited into their retirement savings account. The match is up to 50% of the employee's contributions and is subject to a phase-out as employees' income increases. The funds would be subject to state and federal taxes when they are eventually distributed from the retirement account.

Effective 2033

Required Minimum Distributions

As discussed above, the age at which RMDs must begin will change from 73 to 75 in 2033.

Conclusion

The provisions outlined above are not an exhaustive list and we have highlighted several key provisions that are now law. Keeping abreast of these changes can help both individuals and employers act quickly to adjust to new requirements. For employer-sponsored plans, it is worth considering incorporating some of these changes now instead of waiting for the required implementation date(s).

Roehl & Yi will continue to digest this significant bill and offer additional guidance, as needed.

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