

Small Employer Plan Credits



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Small Employer Plan Credits – SECURE 2.0 ACT

On December 29, 2022, the SECURE 2.0 Act was included as part of a larger omnibus spending package, the Consolidated Appropriations Act, 2023. The legislation contained 92 provisions of which are retirement plan related. Plan amendments made pursuant to SECURE 2.0 are to be made by the end of 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment and also extended SECURE 1.0 and CARES amendment deadlines.

Section 102 of the SECURE 2.0 Act amend the tax laws to increase the employer credit for small plan startup costs.

SECURE 1.0 Act increased the limit to 50% of the qualified startup costs paid or incurred, but limited to the greater of –

- (a) \$500, or
- (b) The lesser of –
 - (i) \$250 for each employee who is not a Highly Compensated Employee and who is eligible to participate in the plan, or
 - (ii) \$5,000.

Note that while the maximum credit allowed had increased, there was still an overriding limit of 50% of total costs. The new limit applied to taxable years after December 31, 2019.

SECURE 2.0 Act expanded existing credits and established a new credit. The changes are –

- (a) Startup credit, for the qualified startup costs paid or incurred, increased to 100% for companies with 50 or fewer employees.
- (b) The existing cap of \$5,000 per employer was retained.
- (c) The new credit –
 - (i) Offsets up to \$1,000 of employer contributions per employee in the first year, phased down gradually over 5 years.
 - (ii) It applies to companies with 100 or fewer employees but is phased out for companies with more than 50 employees.
 - (iii) No credit for contributions to any employee making more than \$100k (indexed after 2023). NOTE: no deduction for employer contributions qualifying for credit.
 - (iv) Credit is 100% of contributions as limited for years 1 and 2, 75% in year 3, 50% in year 4 and 25% in year 5.

Other provisions related to the rules regarding the tax credit have not been amended. Namely:



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1. An Employer who establishes a new plan is NOT eligible for the credit if that employer (or any member of any control group including the employer, or a predecessor of either) maintained another qualified plan (including a Simple or a SEP) for substantially the same employees during the 3-taxable year period immediately preceding the 1st taxable year for which the credit would otherwise be applicable.
2. Qualified startup costs mean ordinary and necessary expenses paid or incurred in connection with the establishment or administration of the plan or retirement-related education provided to the employees of the plan.
3. The plan must cover at least 1 non-Highly Compensated Employee (meaning that a sole proprietor is not eligible for the credit).
4. The first year for the credit can be the first year that the plan is effective, or the taxable year preceding the first year the plan is effective (since there might be billable startup costs for the preceding year for consulting services, etc.).
5. All eligible employer plans are treated as one plan.
6. The employer cannot take the credit and a tax deduction for the same startup costs.

Example:

1	Eligible NHCEs	10
2	NHCEs * \$250	\$2,500
3	Max Credit (lesser of 2 or \$5,000)	\$2,500
4	Actual Plan Expenses	\$2,100
5	Available Credit	\$2,100

CREDIT FOR ADDING AUTO-ENROLLMENT: The SEURE 2.0 Act did not make any changes to the credit for adding Auto Enrollment to a plan. The rules remain, that an eligible employers can receive a tax credit of \$500 for each year of the 3-taxable-year period beginning with the first taxable year for which the employer includes an eligible automatic contribution arrangement. The eligible automatic contribution arrangement is an arrangement under which the participant is auto enrolled in the plan at some uniform percentage of compensation unless he specifically opts out or elects a different percentage and under which the participant receives an automatic enrollment notice. Plans that are eligible for the credit include 401(a) plans, 401(k) plans, and SIMPLEs. 403(b) plans and 457(b) plans are NOT eligible for the credit. The credit is available for auto-enrollment added to a new plan or to an existing plan. Unlike the startup credit,

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the credit for adding auto-enrollment is not tied to plan expenses. The credit for adding auto-enrollment is in addition to the startup credit.

The purpose of the SECURE 2.0 Act is to build on the SECURE Act to encourage retirement savings and to encourage small employers who do not currently have a plan to adopt one.



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