The SECURE 2.0 Act : Part 1 401(k) Plans

RETIREMENT MANAGEMENT SERVICES, LLC
Plan Consulting • Administration • Design

RETIREMENT MANAGEMENT SERVICES, LLC
905 Lily Creek Road Louisville, KY 40243
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The 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 in total, almost all of which are retirement plan related. We have pulled together a summary of the Provisions below. 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. In later articles, I will be describing the various Sections of the Act, the practical impact of each Section and the due dates for implementing the changes.

Provision	Description	General Effective Date
Federally Declared Disaster Distributions - Required	Provides permanent rules relating to the use of retirement funds in the case of qualified disaster. Distributions are limited to $22,000 per disaster (rather than the $100K Allowed in Cares Act). May be repaid in 3-year period after distributions. Income inclusion maybe spread over 3 years. Additionally, amounts distributed prior to the disaster to purchase a home would be permitted to be recontributed, and an employer would be permitted to provide for a larger amount be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals. Exempt from the 10% early withdrawal Penalty	Disaster after 1/26/2021
Distributions: Terminally Ill Exemption –	Provides an exception to the 10% early distribution tax for distribution to a terminally ill individual. Must provide evidence required by plan administrator. May be repaid. Not a special distribution option but rather an exception to the tax	12/29/2022
Optional Treatment of ER Contributions as Roth contributions -Not Required	401(a) plan, 403(b) plan, or a governmental 457(b) plan may permit an employee to designate matching or nonelective contributions as designated Roth contributions.	12/29/2022

Distributions: Auto-Portability - Required	Prohibited transaction exemption for service provider providing automatic portability services, such as automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant elects otherwise.	2024
Distributions: Cash out Limit -	Increases limit from $5,000 to $7,000.	2024
Distributions: Penalty-free Withdrawals for Domestic Abuse Victims – Not Required	Plans may permit withdrawal in the case of an eligible distribution to a domestic abuse victim. Lesser of $10,000 (indexed) or 50% of balance. Applies to plans not subject to 417. Withdrawal is exempt from 10% penalty. May be recontributed to applicable eligible retirement plans, subject to certain requirements.	2024
Distributions: Personal Emergency – Not Required	One distribution would be permissible per year of up to lesser of $1,000 or Vested Account balance, with the OPTION to repay the distribution within 3 years. No further emergency distribution would be permissible during the 3-year repayment period unless recontribution occurs. Exemption from 10% penalty. May rely on participant certification absent actual knowledge.	2024
Distributions: Substantially Equal Periodic Payments - Required	Clarification of substantially equal periodic payment rule. The exception from the 10% early distribution tax for substantially equal periodic payments will continue to apply if the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules. No inference on rules prior to enactment.	2024 (but immediate for annuity distributions)

Retirement Savings Lost and Found - Required	Requires the DOL to establish an online searchable database with information on the location of unclaimed vested benefits of missing, lost, and non-responsive participants and beneficiaries in ERISA plans. Information reporting required for plan years beginning at least 2 years after enactment.	2024
Distributions: LTC Premiums – Not Required	Permits DC plans to distribute up to $2,500 (indexed) per year for the payment of premiums for certain specified long-term care insurance. Distributions from plans and IRAs to pay such premiums would be exempt from the additional 10% tax on early distributions. Participant must file premium statement with plan; insurer with Treasury. Treasury must maintain website of certified LTC providers.	2025
Employee Ownership: Deferral of Tax for Certain Sales of Employer Stock to Employee Stock Ownership Plan Sponsored by S Corporation - Required	Deferral of tax for certain sales of employer stock to ESOPs. Permits the owner of employer stock issued by an S corporation to defer 10% of long term capital gain from the sale of that stock to an ESOP. Prior only available to C Corporations.	2028
401(k): Retroactive First-year Elective Deferrals for Sole Proprietors – Not Required	Sole owner of an unincorporated trade or business, who is the only employee of such trade or business, may treat any elective deferral to a 401(k) plan made before the tax return due date (determined without regard to any extensions) as having been made before the end of the plan's first plan year. Applies only to the first plan year in which the section 401(k) plan is established.	2023, Plan Year Beginning
401(k)s: Small Immediate Financial Incentives for Contributing to a Retirement Plan -Not Required	Allows de minimis financial incentives in 401(k)s and 403(b)s for employees "who elect to have [deferrals made]." Cannot be paid for by the plan. De-minimis not defined.	2023, Plan Year Beginning

Distributions: EE Certification of Deemed Hardship Conditions – Not Required	In determining whether a distribution is due to an employee hardship, plan administrator of a 401(k), 403(b), or 457(b) plan may rely on the employee's certification that the distribution is on account of an eligible hardship/emergency, not in excess of amount needed, and no alternative means to satisfy need. Treasury may restrict in regs for actual knowledge.	2023, Plan Year Beginning
Reporting and Disclosure: Eliminate Plan Requirements for Unenrolled Participants	Allows plans to provide much more limited information to employees who are not contributing to a plan and that have no balance in the plan. Must have provided an SPD, any required eligibility notices, and an annual notice.	2023, Plan Year Beginning
Distributions: Qualified Charitable Distribution Rule Modifications - Required	Indexes the annual $100,000 exclusion limit after 2022. Allows a one-time $50,000 distribution from an IRA to a split-interest entity.	2022
Tax Credit: Small Employer Pension Plan Start-up Credit Modification	Establishes a new credit and expands an existing credit. Startup credit increased to 100% for companies with 50 or fewer employees. The existing cap of $5,000 per employer would be retained. Three year period for credit to apply. The new credit offsets up to $1,000 of employer contributions per employee in the first year, phased down gradually over 5 years. Applies to companies with 100 or fewer employees, however, it is phased out for those with more than 50 employees. No credit for contributions to any employee making more than $100k (indexed after 2023). NOTE: no deduction for employer contributions qualifying for credit.	2023, Tax Year Beginning

Qualified birth or adoption distributions (QBADs) - Not Required	SECURE 2.0 modified the repayment schedule of Birth or adoption withdrawals to clarify repayment is limited to three years. Repayment of a QBAD is voluntary. For those whose distributions occurred after December 29, 2022, repayment may start at any time during the three-year period beginning on the day after the date the QBAD was received. For those who have already received a QBAD prior to December 29, 2022, the repayment period ends on December 31, 2025.	2023
Emergency Savings Accounts – Not Required	Employers may offer NHCEs pension-linked (despite wording, this applies to defined contribution plans) emergency savings accounts and may automatically opt employees into these accounts at no more than 3% of their salary. Accounts are capped at $2,500 (or lower as set by the employer). Contributions are made post-tax, and are treated as elective deferrals for purposes of retirement matching contributions. Once the cap is reached, the contributions may be stopped or continue as Roth deferrals up to 4 distributions with no fee, no tax withholding available per year. Upon separation can be taken as cash or rolled into ROTH IRA or ROTH 401(k).	2024, Plan Year Beginning
Family Attribution Rule Fixes - Required	Disregards community property rules for ownership under CG and ASG. Spouse not attributed options of a minor child.	2024, Plan Year Beginning

Plan Amendments: Allow More Time to Add Discretionary Plan Amendments to Increase Benefits	May amend plan to increase benefits accrued under the plan as of any date in the preceding plan year (other than increasing the number of matching contributions) as long as it would not otherwise cause the plan to fail to meet any of qualification requirements and the amendment is adopted before the time prescribed by law for filing the return of the employer for a taxable year (including extensions) during which the amendment is effective.	2024, Plan Year Beginning
Student Loan Matching Program – Not Required	Permits employers to match student loan payments under 401(k), 403(b), SIMPLE, and 457(b) plan as if those payments were elective deferrals. May rely on EE certification re: payment amount.	2024, Plan Year Beginning
Top Heavy: Modification for EEs Who Don't Meet Age and Service Requirements -	Employees who do not meet the minimum age and service requirements under the Code may be ignored in determining whether plan satisfies the top-heavy minimum contribution requirement by testing excludable and non-excludable employees separately.	2024, Plan Year Beginning
Catch-up Contributions: Required to Be Roth - Required	Catch-ups under a 401(k), 403(b) plan, or governmental 457(b) plan must be designated Roth contributions for Ps with > $145k (indexed) in wages in prior year. Treasury may issue regulations re: changing election if comp is determined to exceed threshold after election is made. Silent on recharacterization. **Requires plan to have a ROTH option to be used.**	2024, Tax Year Beginning
Plan Amendments to Conform with SECURE 2.0 - Required	This provision allows plan amendments made pursuant to this bill 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. Also extends SECURE 1.0 and CARES.	2025, Dec 31

Automatic Enrollment: Required	All new 401(k) and 403(b) plans adopted after 12/29/22 except businesses with fewer than 10 employees, new businesses less than 3 years old, and churches and governments -- must (beginning 1/1/25) automatically enroll participants at 3%-10% and increase the rate by one percent per year to at least 10%, but no more than 15%. Employees would have at least 90 days to opt out and take a distribution of any automatic deferrals. Must have Eligible Automatic Contribution Arrangements (EACAs) withdrawal provision. Does not apply to SIMPLE plans (they're IRAs), but does apply to adoption of a MEP after enactment date (based on employers' adoption, not effective date of MEP).	2025, Plan Year Beginning
Catch-up Contributions: Limit Increase at Certain Ages - Required	Raises catch-up contributions to greater of $10,000 or 150% of regular catchup limit in 2024 for years in which the participant would attain age 60 through 63 ($5,000 or 150% of 2025 limit for SIMPLE plans). Indexed after 2025.	2025, Plan Year Beginning
Long-Term Part-Time (LTPT) Worker Definition Modification - Required	Requires part-time workers who work for at least 500 hours per year for two years to be eligible to make employee contributions to an employer's defined contribution retirement plan. Adds provision to ERISA, covering 403(b) plans. Such provision ignores service for vesting and eligibility prior to 2023. Changes 401(k) to exclude vesting service prior to 2021. Effective 2025PY, but vesting change and top heavy exemption fix effective as if included in the enactment of section 112 of SECURE Act.	2025, Plan Year Beginning

Paper Statement Mandate - Required	Requires at least one quarterly benefit statement to be delivered on paper unless the participant opts-out of the paper requirement. The paper disclosure requirement is once every 3 years for defined benefit plans. No paper required for wired-at-work or those who opt out of paper.	2026, Plan Year Beginning
Saver's Match: Enhancement of Saver's Credit - Required	Refundable Saver's Match. The credit would be a match of 50% of up to $2,000 in IRA or retirement plan contributions. Must go into retirement vehicle unless match is <$100. Contribution/match treated as elective deferral (but doesn't count toward limits). Subject to distribution restrictions applicable to deferrals except can't withdraw for hardship.	2027, Tax Year Beginning
Employee Ownership: Certain Securities Treated as Publicly Traded in Case of Employee Stock Ownership Plans	Allows certain non-exchange traded securities to qualify as "publicly traded employer securities," making it easier for them to offer ESOPs.	2028, Plan Year Beginning
RMDs: Modification in Calculation for Partial Annuitiziation - Required	If a tax-preferred retirement account also holds an annuity, present law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the RMD rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. The provision would permit the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions. Good faith reliance until regulations issued.	2022

RMDs: New Required Beginning Dates - Required	The required beginning date for required minimum distributions (RMDs) is age 73 beginning in 2023, and age 75 beginning in 2033. Hard cut-off; based on birthday (age 72 before 2023 = age 72; turn age 73 before 2033 = age 73; age 74 after 2032 = age 75).	2023
RMDs: Qualifying Longevity Annuity Contracts (QLACs) Modifications	Allows individuals to buy QLACs to satisfy all of their RMD requirement up to $200,000 (indexed after 2024). The current cap applicable to QLACs is the lesser of 25% of the account balance or $125,000. Clarifies that survivor benefits may be paid in the case of divorce and permits up to 90-day free look period. Good faith reliance prior to regulations.	2022
RMDs: Reduction in Retirement Plan Excise Taxes	Reduces the excise tax for failure to take a required minimum distribution (RMD) to 25% from 50%, and further reduces the excise tax to 10% for taxpayers who take the required RMD before an IRS audit or (if earlier) the second year after the year in which the excise tax is imposed.	2023
RMDs: Remove RMD Requirements for Certain Life Annuities	Allows individuals to satisfy the required minimum distribution (RMD) requirements by purchasing a fixed annuity with a circumscribed set of features, such as increasing no more than 5% per year or providing for a death benefit equal to the amounts paid for the annuity minus prior payments.	2023
RMDs: Roth Accounts	Roth RMD parity with IRAs. No pre-death RMDs from Roth accounts in qualified plans (which is currently the rule only for Roth IRAs).	2024, Tax Year Beginning
RMDs: Surviving Spouse Elections	Surviving spouse election to be treated as employee. Allows a surviving spouse to elect to be treated as the deceased employee for purposes of RMDs.	2024

EPCRS: Expansion	Expands EPCRS to allow self-correction of inadvertent significant plan errors without deadline (as long as before examination and within a reasonable period after discovery). Self-corrected loans treated as meeting requirements of VFCP. DOL may impose reporting. Waiver of 60-day rollover for reasons beyond control of account owner. It would also allow the IRS to waive the excise tax for required minimum distributions when an IRA owner self-corrects the error within 180 days.	2022
EPCRS: Recovery of Retirement Plan Overpayments	Restricts plan sponsors from recovering certain excess payments from a participant after a three-year period when the individual did not cause the overpayment.	2022
EPCRS: Safe Harbor for Corrections of Employee Elective Deferral Failures	Allows employers to correct inadvertent auto-enrollment errors within 9½ months after the end of the year in which the error occurs without making up missed deferrals.	2024