SECURE 2.0 Act Recap

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On December 29, 2022, President Biden signed into law the Consolidate Appropriations Act of 2023. Included in this act is the SECURE 2.0 Act of 2022 (SECURE 2.0), one of the largest pieces of legislation affecting retirement plans in over a decade. **At over 350 pages, the SECURE 2.0 Act contains over 90 provisions affecting retirement savings plans**. Below is a summary of the points which may be of the most interest and importance for retirement plan sponsors. This does not cover all the new requirements and options contained in SECURE 2.0. and does not go into deep detail on intricacies of these new provisions. We are awaiting additional guidance from Treasury on the implementation of these new requirements and as such there are still many unanswered questions, so we will provide further information as it becomes available.

In most cases, Plans will need to be amended to adopt provisions of the SECURE 2.0 Act by the last day of the Plan year beginning on or after January 1, 2025. Plans are required to operate in accordance with the new laws in a good faith manner until formally amended.

Changes affecting employer sponsored plan contribution requirements and provisions:

- Effective immediately, if a plan permits, participants may make an election to have employer matching and non-elective contributions be treated as Roth contributions. Applies to 401(k), 403(b) and 457 plans.
- All new plans adopted after December 29, 2022, will be required, beginning with the 2025 plan year, to automatically enroll plan participants in the employee contribution provisions of the Plan. This provision applies to all new 401(k) and 403(b) Plans adopted by plan sponsors who have been in business more than three years and who have more than 10 employees. Participants must automatically be enrolled at a rate between 3% - 10%, and that rate must be increased by 1% per year to at least 10%, but not more than 15%. This does not apply to SIMPLE plans or plans established prior to December 29, 2022.
- For Plan tax years after December 31, 2023, any amount of participant salary deferrals that are "Catch-Up" contributions are required to be treated as Roth deferrals. This applies to any participant who received, in the prior year, FICA wages more than $145,000 (indexed).
- For plan years beginning after December 31, 2024, employers sponsoring 401(k) or 403(b) plans must provide the option allowing employees classified as "Long-Term, Part-Time Employees" (LTPT) to make employee contributions to the plan. A LTPT employee is an employee who has had two consecutive plan years (for the 2024 plan year, three years are required to be classified as an LTPT employee) having worked between 501 and 999 hours. An employee must be 21 years of age to be considered at LTPT. LTPT employees are not required to receive any employer contributions and are excludable for various plan testing requirements.

- Beginning in 2025, allowable catch-up contribution limits will increase to the greater of $10,000 or 150% of the regular catch-up limit for participants between the ages of 60 and 63. SIMPLE plan catch up contributions will have a similar increase.
- Beginning in Plan years after December 31, 2023, an employer may provide matching contributions on amounts of "Qualified Student Loan Payments" made by employees.
- A small, de minimis incentive to encourage employees to participate in a 401(k) can now be offered.
- Allows for a discretionary plan amendment to be made after the end of the plan year to increase employer contributions for prior plan year.

Changes in Required Minimum Distribution requirements:

- SECURE 2.0 contains a handful of changes relating to Required Minimum Distributions (RMDs) from both qualified plans and IRAs. SECURE 2.0 continues along the path laid forth by SECURE 1.0 and adjusts the age at which an individual with retirement accounts must begin taking annual RMDs from their accounts. Beginning in calendar year 2023, the RMD age increases to age 73 for a person who reaches age 72 after December 31, 2022, and age 73 before January 1, 2033. The age will again increase to age 75 in 2023 for an individual who reaches age 74 after December 31, 2032.
- Beginning in 2024, participants with Roth accounts in employer sponsored retirement plans (401(k), profit sharing or 403(b) plans) will no longer be required to receive an RMD from those funds.
- Effective immediately, the excise tax on a missed RMD amount decreases to 25% from the original 50%. If the RMD error is corrected within the two-year correction window, that excise tax is further reduced to 10% of the missed RMD amount.
- Spousal beneficiaries in an employer sponsored plan will be allowed to be treated as the employee under the terms of the plan and RMDs will be determined using the same rules that would have applied to the deceased employee.

Changes in distributions from qualified plans:

- **Additional optional distributions from qualified plans –** Retirement plan sponsors now have the option of providing for new in-service distributions from retirement plans including:
    a. Terminally ill participants may have the option to receive an in-service distribution, not subject to the 10% early withdrawal penalty if they provide certification from a physician of their medical situation. This distribution may be repaid to the plan. Available immediately if the plan allows in-service distributions.
    b. Beginning in 2024, a distribution of up to $1,000 with an optional repayment over three years is available for a personal emergency, as self- certified by the participant. This distribution is exempt from the 10% early withdrawal penalty.
    c. Also beginning in 2024, plans may permit in-service withdrawal payments to domestic abuse victims. This distribution is repayable to the plan and exempt from 10% early withdrawal penalties.
    d. Beginning in 2023, a plan may allow annual calendar year distributions of up to $2,500 for the payment of Qualified Long-Term Care, including premiums paid for LTC insurance. This is not subject to the 10% early withdrawal penalty.

- When processing hardship distributions, the Plan sponsor may rely upon a participant's certification that they have an immediate and heavy financial need under hardship rules, the distribution will not exceed the amount of need, and they have no other available resources. A participant's self-certification is not valid if the plan sponsor has information contradicting that assertion.
- The limit for involuntary cash-out distributions, for distributions made after December 31, 2023, is increased from the current limit of $5,000 to $7,000.
- Rules relating to Qualified Disaster Distributions have been made permanent.

SIMPLE plan changes:

- Effective now, SIMPLE plans can provide for Roth contributions.
- Effective for plan years beginning after December 31, 2023, employee contribution limits applying to SIMPLE plans can be increased by 10% of the allowable limit. For employers with more than 25 employees, this applies if the sponsor increases matching contributions up to 4% or non-elective contribution to 3%.
- Effective for tax years beginning after December 31, 2023, a non-elective contribution up to the lesser of compensation or $5,000 may be made for plan participants.
- Mid-year change from SIMPLE plan to Safe harbor 401(k) Plan will be allowable for plan years beginning after December 31, 2023.

Other provisions:

- The Department of Labor is directed to create an online, searchable database to gather information to assist plan participants and beneficiaries to locate retirement plan benefits.
- Expansion of the Employer Plans Compliance Resolution System to allow for no time limit on situations under which a Plan can correct errors under Self Correction. Also expands self-correction options for loan errors.
- IRA RMD tax is waived if self-correction is made within 180 days of missed RMD.
- Waiver of 60-day rollover rules if failure to rollover timely is due to reasons beyond control of the participant.
- IRA catch-up contribution amounts will be indexed for inflation in $100 increments, effective in 2024.
- SECURE 2.0 eliminates stock attribution due to minor children for control group purposes.
- Creation of an Emergency Savings Account in electing qualified plans for plan years beginning after 2023.
- Expansion of plan start up tax credit for adoption of new plan to allow:
    a. a credit of 100% of admin and start-up costs for sponsors with 50 or fewer employees
    b. a credit of up to $1,000 per employee (decreased each subsequent year up to 5 years) for employer contributions made for participant. Subject to phase out based upon number of employees.
- For first year of plan adoption by a sole-proprietor, allows for a retroactive election of employee contributions. Effective immediately.

- Creation of a new Starter 401(k) Plan for employers who do not sponsor a qualified plan. The new Starter 401(k) Plan may be a good option for plan sponsors who do not wish to participate in the mandated OregonSaves plan but are not interested in sponsoring a traditional retirement plan. A Starter 401(k) Plan:
    a. Allows only employee deferrals.
    b. Requires automatic enrollment rate between 3% and 15%.
    c. Contributions limited to $6,000 with $1,000 catchup for those over 60 (indexed).
    d. No testing requirements but must satisfy general minimum age and service requirements.
- Effective for years beginning after December 31, 2026, the SAVER's Credit is replaced with a SAVER's Match. The SAVER's Match will provide a government funded match contribution at the rate of 50% matching on contributions up to $2,000 made to a 401(k)plan or an IRA subject to phase out based upon filing status and income.
- Effective for distributions after December 31, 2023, a distribution from a 529 college savings plan may be made to a Roth IRA for the benefit of the 529 plan beneficiary.
    a. Available 15 years after the establishment date of the 529 plan.
    b. Limited to Roth IRA contribution limit.
    c. $35,000 beneficiary lifetime limit.
- Allows for deferral of tax for certain sales of S-Corp stock to an Employee Stock Ownership Plan.

SECURE 2.0 is very detailed new legislation that provides opportunities for both plan sponsors and plan participants to expand their options while saving for retirement. We will continue to evaluate these new provisions and provide further information and opportunities for our clients.

Please contact our Retirement Plan Services team for further details regarding any of these new provisions on which you may have questions.