READY, SET, SECURE YOUR RETIREMENT PLAN FOR SECURE 2.0

Part I

This past December Congress passed one of the most comprehensive pension bills in recent history, the SECURE 2.0 Act. This new Act makes numerous changes to 401(k), 403(b), and other retirement plans.

This is the first of two articles from Haynes Benefits PC that highlights changes in SECURE 2.0. This article discusses changes made by SECURE 2.0 to eligibility and participation rules, contributions, and participant communications. In our second article (to follow next week) we will discuss SECURE 2.0's expansion of distribution options, including improved tax implications for certain distributions, and correction of plan errors.

Many of SECURE 2.0's new features are mandatory, while others are optional for the plan sponsor or employer. SECURE 2.0 also includes many small technical changes.

Most required changes must be implemented before the date written plan amendments are due, and most optional changes also may be implemented before the date written plan amendments are due. Plan amendments to comply with the new Act are not required to be made until the last day of the first plan year beginning on or after January 1, 2025 (or 2027 in the case of governmental plans). However, the plan must operate in accordance with any of the new features required or implemented by the plan sponsor, and plan sponsors will also want to communicate any newly applicable features to their participants.

If you want to hear more about SECURE 2.0, sign up for our two-part "Compliance Bites" live video presentations on February 8th and February 15th **click here**

PARTICIPATION CHANGES

Requiring coverage for more part-time workers.

Many retirement plans exclude workers who work fewer than 1,000 hours a year. When this change becomes effective, 401(k) plans and non-governmental 403(b) plans will have to permit any employee to participate in the plan after he or she completes two consecutive years of service and completes at least 500 hours of service each consecutive year. Prior to SECURE 2.0, an employee would have had to complete three consecutive years of service with 500 hours of service in each year to participate in the plan.

Effective for plan years beginning after December 31, 2024.

Requiring automatic enrollment in most new retirement plans.
All *new* 401(k) and 403(b) plans established after 2024 must enroll participants in the plan automatically upon employees becoming eligible (unless the employee opts out of coverage). Initial automatic enrollment amount is at least three percent (3%) but not more than ten percent (10%). Each following year that amount is increased by one percent (1%) until it reaches at least ten percent (10%), but not more than fifteen percent (15%). Exceptions apply to small businesses with ten or fewer employees, businesses that have been in business for less than three years, church plans, and governmental plans.

Effective for plan years beginning after December 31, 2024.

EMPLOYEE DEFERRAL CONTRIBUTION CHANGES

Emergency savings accounts linked to individual account plans.
Allows Employers the option to offer pension-linked emergency savings accounts to their non-highly compensated employees (generally, non-owners or anyone making less than $150,000). Employers also have the option to automatically opt employees into this feature.

Emergency savings accounts are funded by employee deferral contributions equal to no more than three percent (3%) of an employee's salary. The portion of an account attributable to the emergency savings account is capped at $2,500 in employee contributions (or a lower amount set by the employer).

Contributions are made on a Roth-like (after-tax) basis and are treated as elective deferrals for purposes of retirement matching contributions.

Employees must be permitted to take at least one tax-free and penalty-free distribution per month. The first four withdrawals from the account each plan year may not be subject to any fees or charges solely on the basis of such withdrawals.

At separation from service, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan (if they have one) or IRA.

Effective for plan years beginning after December 31, 2023.

Higher compensated participants may only make catch-up contributions in the form of Roth deferrals.
All catch-up contributions made to qualified retirement plans by employees with compensation of $145,000 or more (as indexed for inflation) must be in the form of Roth deferrals.

Effective for taxable years beginning after December 31, 2023.

Higher catch-up contribution limit may apply for tax years in which participants turn age 60 through age 63.
For plans that permit catch-up contributions, this provision increases the catch-up contribution limits to the greater of $10,000 (as indexed for inflation), or fifty percent (50%) more than the regular catch-up amount, for individuals that will attain ages 60, 61, 62 or 63 during the taxable year.

Effective for taxable years beginning after December 31, 2024.

EMPLOYER CONTRIBUTION CHANGES

Optional treatment of employer matching or nonelective contributions as Roth contributions.
For defined contribution plans, an employer may provide participants with an election to receive employer matching contributions or nonelective contributions on a Roth (after-tax) basis.

Effective as of December 29, 2022.

Treating student loan payments as elective deferrals for purposes of matching contributions.
Allows an employer to make matching contributions under a 401(k) plan, 403(b) plan, a governmental

section 457(b) plan or a SIMPLE IRA with respect to any indebtedness incurred by the employee solely to pay the employee's qualified higher education expenses.

A plan will be able to test separately those employees who receive matching contributions on student loan repayments for nondiscrimination testing on elective contributions.

Effective for contributions made for plan years beginning after December 31, 2023.

PARTICIPANT COMMUNICATIONS

Eliminating some plan notices to unenrolled participants.

Employers no longer have to provide certain intermittent ERISA or Internal Revenue Code notices to unenrolled participants who have not elected to participate in their employer's retirement plan, as long as the employer sends (1) an annual reminder notice of the participant's eligibility to participate in the plan along with any applicable election deadlines, and (2) any otherwise required document requested at any time by the participant.

This rule applies only with respect to unenrolled participants who received the summary plan description, in connection with initial eligibility under the plan, and any other notices related to eligibility under the plan required to be furnished.

Effective for plan years beginning after December 31, 2022.

Certain benefit statements must be provided on paper unless a participant elects otherwise.

For 401(k) plans, 403(b) plans, ESOPs and other defined contribution plans, the plan is required to provide a paper benefit statement at least once every year unless a participant elects otherwise. The other three required quarterly statements can be provided electronically.

For defined benefit plans, the statement that must be provided once every three years under ERISA must be a paper statement unless a participant elects otherwise.

These requirements do not apply to governmental plans.

The annual paper statement is effective for plan years beginning after December 31, 2025.

The content herein is provided for educational and informational purposes only and does not contain legal advice. Please contact our office if you have any questions about compliance requirements applicable to your employee benefit plans or other HR compliance matters.

Dated: January 25, 2023

LEGAL COUNSEL BENEFITING YOU

HAYNES BENEFITS PC

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