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SECURE 2.0 Act of 2022 Arrives: (Another) Landmark Retirement Package

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The wait is over for SECURE 2.0, a long-awaited (and debated) package of retirement plan reforms. Today, Congress passed the "SECURE 2.0 Act of 2022" as part of the 2023 Consolidated Appropriations Act; President Biden is expected to sign the bill into law soon. The bill text may be viewed here, and the Senate Finance Committee's summary of SECURE 2.0 may be viewed here.

Given the breadth of the changes and the anticipated regulatory efforts to implement the new law, virtually all qualified retirement plans will need to be reviewed in conjunction with SECURE 2.0's passage. Future blog posts will explore these provisions in more detail, so check back for comprehensive analysis. Until then, below is a high-level summary of some key highlights for employers and retirement plan sponsors:

Improving Access to Retirement Savings. SECURE 2.0 includes several changes intended to improve employee access to workplace-based retirement savings. Among other changes, it:

- Requires automatic enrollment for new 401(k) and 403(b) plans that are first established after SECURE 2.0's enactment, with limited exceptions for small businesses and new employers (*effective for plans established after enactment, with automatic enrollment provisions required for plan years beginning after December 31, 2024*)
- Permits employers to treat qualifying employee student loan repayments as elective deferrals for purposes of matching contributions to 401(k), 403(b), 457(b) or SIMPLE plans (*effective for plan years beginning after December 31, 2023*)
- Debuts a new retirement plan-linked "emergency savings" account, whereby eligible non-highly compensated employees may be automatically enrolled by an employer into an emergency savings account maintained as part of the retirement plan; employee contributions to the account would be capped at $2,500, with the employee deferral rate capped at 3% or less (*effective for plan years beginning after December 31, 2023*)

- Exempts “emergency withdrawals” from the otherwise applicable penalties on early withdrawals from retirement plan accounts; distributions for emergencies would be limited to $1,000 per calendar year, with the opportunity for repayment within a three-year period (*effective for distributions made after December 31, 2023*)
- Replaces the saver’s tax credit with the “saver’s match,” which is a federal matching contribution deposited in the retirement plan account for qualifying employees (based on modified adjusted gross income); the match is 50% of qualifying contributions up to $2,000 (*effective for tax years beginning after December 31, 2026*)
- Increases catch-up contribution limit for employees who have attained ages 60, 61, 62, and 63 to the greater of: (1) $10,000 (indexed), or (2) 150% of the regular catch-up contribution limit (*effective for tax years beginning after December 31, 2024*); however, for tax years beginning after December 31, 2023, note that all catch-up contributions are subject to Roth treatment (except for individuals with wages of $145,000 or less)
- Provides that employers without retirement plans may offer “starter” deferral-only 401(k) plans; starter plans would be exempt from nondiscrimination and top-heavy testing and employee deferrals would be capped at $6,000 (indexed) (*effective for plan years beginning after December 31, 2023*)
- Permits employers to provide employees with the option of receiving matching or non-elective contributions on a Roth basis (*effective on enactment*)

Building on SECURE Act of 2019. SECURE 2.0 revises certain provisions first introduced in the SECURE Act of 2019, including:

- Reduces the eligibility period for long-term part-time workers to become eligible to make elective deferrals to a workplace retirement plan from three consecutive 12-month periods to ***two*** consecutive 12-month periods; SECURE 2.0 also extends long-term part-timer rules to 403(b) plans covered by ERISA (*effective for plan years beginning after December 31, 2024*)
- Delays the age on which the required beginning date is determined for starting required minimum distributions from age 72 to age 73 for individuals who attain age 72 after December 31, 2022, and then increases the age further to age 75 for individuals who attain age 74 after December 31, 2032 (*effective for distributions required to be made after December 31, 2022*)

Simplifying Retirement Plan Operations. Appearing to recognize the operational burdens often placed on retirement plan sponsors, SECURE 2.0 includes a number of provisions intended to streamline retirement plan operations, as it:

- Expands the IRS's Employee Plans Compliance Resolution Systems ("EPCRS") to cover additional types of errors, with the result being that most inadvertent failures to comply with tax-qualification rules would be eligible for self-correction, assuming IRS-approved practices and procedures were in place to prevent such errors (*effective on enactment*)
- Permits retirement plan fiduciaries the flexibility not to recoup overpayments mistakenly made to retirees, with good faith relief available for recovery of benefit overpayments predating enactment (*effective on enactment*)
- Reduces penalty excise taxes for individual failures to take required minimum distributions from 50% to 25%; further reduction of excise tax to 10% possible if error is corrected in a timely manner (*effective for tax years beginning after enactment*)
- Creates a national online database, housed at the Department of Labor, for former participants to search for contact information for retirement plan administrators (*DOL database required to be created within two years of enactment, but required plan reporting would start the second December 31 after enactment*)
- Permits employees to self-certify that they have experienced a hardship for purposes of taking a hardship withdrawal from retirement plan accounts (*effective for plan years beginning after enactment*)
- Makes permanent the safe harbor relief for correction of automatic enrollment and automatic escalation failures, which was previously set to expire (*effective for errors after December 31, 2023*)

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