



## SECURE 2.0 IS HERE!

SECURE 2.0 was passed in December 2022, and brings a plethora of changes to the retirement industry. While the 4000+ page legislation is anything but simple, we've compiled an overview of important changes below.

### Starter 401(k) plans (deferral only)

Employers who don't currently offer a retirement plan can offer a new "starter" 401(k) (or 403(b) plan). This type of plan will have an annual contribution limit of \$6,000, with a \$1,000 catch-up contribution allowance for those over age 50, and employees will be automatically enrolled at a rate between 3% and 15%. Plans will be exempt from nondiscrimination testing and no employer contributions will be required. This provision will be effective for plan years beginning in 2024.

### Automatic enrollment

Employers with more than 10 employees who have been in business for 3 years or more who are adopting a new 401(k) plan will be required to automatically enroll employees at a minimum of 3%, but no more than 10%. Contribution amounts will automatically increase 1% each year up to at least 10%, but no more than 15%, and employees have the option to opt out at any time. This provision takes effect for plan years beginning in 2025, but includes plans adopted after SECURE 2.0 was enacted. Therefore, a plan adopted in 2023 must have this provision added for plan years beginning after December 31, 2024.

### Long-term, part-time employees

In 2024, under the SECURE Act, employees who have worked 500 hours in three consecutive years will be eligible to participate. The "long-term part-time" employees must only be permitted to defer; no employer contributions are required, and their participation will not impact compliance testing. SECURE 2.0 reduces the three-year requirement to only need two consecutive years with 500 hours. This shorter requirement begins in 2025. SECURE 2.0 also extends the long-term part-time employee coverage rules to apply to all ERISA-covered 403(b) plans for plan years beginning in 2025.

### Required minimum distributions (RMDs)

The age requirement for RMDs was increased to age 73 for 2023 and increases again to age 75 in 2033. In 2022, RMDs began at age 72. Also, beginning in 2024, RMDs are not applicable on accounts that are designated as Roth in employer plans—this was already the case for Roth IRAs.



### Catch-up contributions

Beginning in 2026, catch-up contributions must be treated as Roth deferrals (not pre-tax) for those whose FICA wages exceeded \$145,000 in the prior year. In 2025, catch-up contribution limits will increase to the greater of \$10,000 or 150% of the regular catch-up limit (currently \$7,500 for those 50 and older in 2023). This increased catch-up deferral only applies for participants age 60, 61, 62 and 63.

### Small business start-up tax credit

SECURE 2.0 provides an increased tax credit for small businesses (those with 50 or fewer employees): 100% of administrative fees for the first three years the retirement plan is in place. The credit is limited to \$250 per non-highly compensated employee (not less than \$500), or \$5,000, whichever is less. Employers who make contributions under a defined contribution plan can receive an additional credit for a designated percentage of employer contributions capped at \$1,000 per employee. The increased credit will apply in tax years beginning after December 31, 2022.

### Student loans

SECURE 2.0 allows for employers to match employees' student loan repayments as if they were deferrals into the 401(k) plan, and the match for this purpose will be tested separately than the match on deferrals. This provision will be effective for plan years beginning in 2024.

### Emergency fund access

Employees may now be able to withdraw up to \$1,000 for personal or family emergency expenses without the typical 10% early distribution penalty tax (if under age 59 ½). These distributions can be repaid within three years; however, additional distributions under this provision will not be permitted for the three-year period unless the amount is repaid. In addition, employers can allow employees to contribute on an after-tax basis to an emergency savings fund through payroll deductions, with a cap of \$2,500, that would permit up to four distributions per year without any fees or charges.

### Employer contributions treated as Roth

Employer contributions could be treated as Roth dollars, if allowed by the plan and elected by the participant, rather than pre-tax treatment as has always been required in the past.

### Employer contribution tax credit

Small businesses can receive tax credits on startup retirement plans based on the contributions they make to employees. To be eligible, businesses must have fewer than 100 employees, have a new defined contribution plan and no other plan covering substantially the same employees in the prior three years, and provide an employer contribution in a defined contribution plan (includes 401(k), SEP, and SIMPLE plans). The amount of the credit is equal to the amount of all employer contributions made to employees who made no more than \$100,000 in the prior year. A credit is available for the first five years after establishment of the plan but decreases by percentage over time. The credit is equal to 100% of contributions in the first two years, 75% in the third, 50% in the fourth, and 25% in the fifth. In any year, the most the credit can be is \$1,000 for any employee, or the available percentage of the contribution, whichever is less.



**Multiple employer plans**

403(b) plans will be allowed to participate in multiple employer plans (MEPs) and pooled employer plans (PEPs) beginning in 2023, including relief from the one bad apple rule.

**College savings rollover**

SECURE 2.0 allows for unused college savings from 529 plans to be rolled over into a Roth IRA if certain conditions are met.

**Fiduciary allowed for a PEP**

For plan years after December 31, 2022, a Pooled Employer Plan (PEP) is now permitted to designate a fiduciary (other than a trustee) to collect employer contributions.

**Reduced penalty for RMD failure**

Effectively immediately, SECURE 2.0 reduces the excise tax for RMDs not taken in a timely manner from 50% to 25%. This is further reduced to 10% if corrected within the two year correction window, unless the IRS has already issued a penalty notice.

**Mandatory "cash out" amount increased**

For distributions after December 31, 2023, a plan may force a terminated employee's account out of the plan if the balance is less than \$7,000, which is increased from \$5,000. Amounts over \$1,000 must still be rolled over on the former employee's behalf.

**Top-heavy contributions**

For plan years after December 31, 2023, "otherwise excludable employees" (those with less than one year of service) are no longer required to receive a top-heavy minimum allocation in years for which the plan is top heavy. They are still included in the top-heavy testing.

**Permanent disaster relief**

For any federally declared disaster occurring January 26, 2021 or later, affected participants will be allowed to take a distribution up to \$22,000 from their account. These distributions won't be subject to the 10% early distribution penalty tax and can be repaid within three years. Also, loan limits are doubled, loan repayments are lengthened, and hardship distributions not used for purchasing a home affected by the disaster can be returned to the plan. For disasters in prior years, Congressional action was needed to give relief, but the new \$22,000 distribution limit is significantly lower than the \$100,000 amount allowed for prior disasters. However, Congress will no longer be required pass legislation for this disaster relief to take effect.

**Surviving spouse beneficiaries**

For years after 2023, a spouse beneficiary can elect to treat an inherited account as their own. As a result, they will be treated as the plan participant for purposes of RMD calculations going forward.

**Mid-year conversion of SIMPLE IRA to safe harbor 401(k)**

For years beginning after December 31, 2023, a SIMPLE IRA can be converted to a safe harbor 401(k) plan in the middle of the year. Currently, this change must be coincident with the start of a calendar year. Although the SIMPLE can only be converted to a safe harbor plan during the year, the next plan year and following plan years are not required to retain the safe harbor provisions.



### **Controlled and affiliated service groups**

Effective for plan years beginning on January 1, 2024 or later, the exception to apply spousal attribution for separate and unrelated businesses for controlled group purposes will be available to spouses who live in a community property state and for parents who share a minor child. For example, if a husband and wife each own their own separate, unrelated business, and neither provides services for the other's business, and there is no direct ownership by the spouses in each other's businesses, the businesses do not need to be treated as a controlled group due to spousal attribution. Previously, this exception did not apply if the couple resided in a community property state or shared a minor child.