Knox McLaughlin Gornall & Sennett, P.C.
Erie • Pittsburgh • Jamestown, NY
814-459-2800 • www.kmgslaw.com

Highlights of SECURE 2.0 Act

Posted on December 30, 2022

As highly anticipated, the U.S. Congress passed SECURE 2.0 in late December 2022.

Following is an overview of certain provisions with which retirement plan sponsors and custodians will want to become familiar.

For plan years beginning after 2023, *new* 401(k) and 403(b) sponsors will be required to auto enroll their eligible employees at no less than 3% and no more than 10%. Unless an employee opts out, his/her contributions will auto increase by 1% each year after auto enrollment up to 10%. Plan sponsors who have (i) ten or fewer employees, or (ii) if the business has been in existence for less than 3 years, or (iii) church plans and governmental plans are exempt from the auto enrollment requirement.

For tax years beginning after 2023, all catch-up contributions for high-income wage earners to 401(k), 403(b) and governmental 457(b) plans will be made on an after-tax basis. (Those who earn $145,000 or less, as indexed, may still make pre-tax catch-up contributions.) This applies to the regular catch-ups (50 year old participants and older) and the enhanced catch-ups (increased catch-up contributions for those who have attained the age of 60, 61, 62 and 63 after 2024).

For 2023, the regular catch-up contributions for those who are 50 years old and older is $7,500 (for SIMPLE plans $3,500) and, effective for tax years after 2024, the increased catch-up contributions for the participants in the age group between 60 and 63 is the greater of either $10,000 (for SIMPLE plans $5,000) or 150% of the regular catch-up.

For example, if the regular catch-up is $7,000 then 150% of $7,000 is $10,500. So, for that year, the 60-year old can contribute $10,500 (which is the larger amount between $10,000 and 150% of the regular catch-up.

Annual IRA catch-up contributions of $1,000 will be adjusted annually for inflation after 2023 and can be made on a pre-tax basis.

Plan sponsors will have discretion to amend their plans to permit matching contributions to qualified plans to match qualified student loan payments by employees. The employees, however, need to be otherwise eligible for a match in order to get a match on their student loan repayment.

Small employers will have an increased credit to write off start-up costs incurred to set up a retirement plan. Effective for tax years beginning after 2022, employers with 50 or fewer employees can claim the credit over 5 years for start-up costs. The amount of credit is adjusted based depending on whether the employer has 50 or fewer employees, 100 or fewer employees or more than 100 employees. No credit is available for employers with more than 100 employees.

One of the big changes is to further delay the required beginning date (RBD) for required minimum distributions (RMD). As of 2023 and through 2032, the RBD is age 73. Starting in 2033, the RBD is the age of 75. Starting as of 2023, penalty for failure to take timely RMD is dropped from 50% to 25% and even further reduced to 10% if the failure is timely corrected.

The 10% penalty for early withdrawals is removed if withdrawals are made as a result of a federally declared disaster and the withdrawal is made within 180 days of the disaster, provided that the participant's primary residence is within the declared disaster area and the participant has sustained an economic loss as a result of the disaster. After 2023, there is no 10% penalty for withdraws up to the lesser of $10,000 or 50% of the present value of the account by victims of domestic abuse. Additionally, no 10% penalty for withdraws by individuals diagnosed with a terminal illness, if such withdrawals are made within a period of 84 months after a physician certifies the diagnosis.

WARNING: For plan years beginning after 2024, long-term part-time employees enter the plan after **2** rather than 3 years of service. (SECURE 1.0 defined long-term part-time employees as individuals with 3 or more consecutive years of more than 500 hours of service - calculated since 2021 - with the employer and who are 21 years of age by the end of the 3rd year.)

SECURE 2.0 expanded a list of exceptions to 10% penalty for early withdrawals. One of these exceptions applies to emergency withdrawals. Beginning in 2024, plan participants may withdraw, penalty free, up to $1,000 per year from the retirement plan to cover any unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. Any additional withdrawals may be taken in subsequent years only if the prior distributions have been paid in full, or cumulative employee contributions and deferrals since the emergency withdrawal equal or exceed the amount of the emergency withdrawal. If neither applies, then the next emergency withdrawal can be made only 3 years after the previous emergency withdrawal.

SECURE 2.0 also allows plan sponsors to add emergency savings accounts to their 401(k) and 403(b) plans. Such emergency savings accounts will be linked to the existing employer plans with individual balances. Only non-highly compensated plan participants can contribute to the emergency savings accounts. The maximum amount held by such emergency savings account is $2,500, but plan sponsors may set a lower balance amount. The IRS is required by law to provide more guidance within 12 months on how to administer such accounts, including how to account for distributions. The contributions are treated as Roth elective deferrals. Congress specifically exempted distributions from emergency savings accounts from 10% penalty. The plans will be required to allow at least one distribution per month and no fees for distributions may be imposed on at least the first four distributions.

Force-out amounts are increased from $5,000 to $7,000 after 2023. Also, the Employer Plans Compliance Resolution System (EPCRS) is expanded to allow more errors to be self-corrected.

Some, if not all of these changes will call for interim plan amendments, which as of now are not required until the last day of the plan year beginning on or after January 1, 2025 (or 2027 for governmental plans).

If you have any questions or concerns or would like us to assist you with your plan amendments, please feel free to contact [Nadia Havard] at 814-459-2800.

Nadia A. Havard

Nadia A. Havard concentrates her practice in all areas of qualified and nonqualified retirement plans and employee benefits; transfer taxes; fiduciary income tax and trust administration; business; as well as estate planning and administration. She also helps nonprofits obtain and maintain their tax-exempt status.

nhavard@kmgslaw.com • 814-459-2800
