

Recent SECURE 2.0 Act Guidance Regarding Small Immediate Financial Incentives and Penalty-Free Withdrawals for Terminal Illness

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PRACTICES Employee Benefits and Executive Compensation

As we previously reported [here](#), on December 20, 2023, the IRS issued Notice 2024-02 (the “**Notice**”) under which the IRS provided guidance on several provisions of the SECURE 2.0 Act for retirement plans. This article is the first in a series of articles on this recent guidance and covers certain provisions concerning small immediate financial incentives and penalty-free withdrawals for terminal illness. In future articles, we plan to discuss guidance regarding the optional treatment of employer matching or nonelective contributions as Roth contributions, expansion of automatic enrollment features, safe harbor plan corrections, and plan emergency savings accounts.

Small Immediate Financial Incentives for Contributing to a Plan

Before the SECURE 2.0 Act, employers were prohibited from providing incentives, other than matching contributions, to encourage employees to contribute to retirement plans. The SECURE 2.0 Act implemented a new exception permitting employers to offer employees *de minimis* financial incentives to contribute to retirement plans but did not specify what qualifies as a *de minimis* financial incentive. The Notice clarifies that a *de minimis* financial incentive to encourage participant contributions to a 401(k) or 403(b) plan (i) may only be offered to employees who do not have an elective deferral election in place, (ii) may not exceed \$250 in value, and (iii) may not be paid for with plan assets. The *de minimis* incentive is taxable to the employee unless it satisfies an exception under the Code.

Penalty-Free Withdrawals for Terminal Illness

The SECURE 2.0 Act permits plan sponsors to allow participants to take a withdrawal from a qualified retirement plan on account of a terminal illness without the imposition of the 10% early-withdrawal penalty, provided that such individual has been certified by a physician as having a terminal illness (“**Terminal Illness Distribution**”). The Notice provides that the physician’s certification must be issued before the distribution is made and must include the following: (i) a statement that the individual’s illness or physical condition can be reasonably expected to result in death in 84 months or fewer after the date of certification; (ii) a narrative description of the evidence that was used to support the statement of illness or physical condition; (iii) the name and contact information of the physician making the statement; (iv) the date the physician examined the individual or reviewed the evidence provided by the individual, and the date that the certification is signed by the physician; and (v) the signature of the physician making the statement along with an attestation. There is generally no limit on the amount that an employee is permitted to withdraw as a Terminal Illness Distribution, and a Terminal Illness Distribution may be repaid to the plan within three years, if permitted by the plan’s terms. If the plan does not permit Terminal Illness Distributions, a terminally ill participant can still avoid the 10% early-withdrawal tax if he or she receives an otherwise permissible in-service distribution under the plan and meets the SECURE 2.0 Act requirements summarized above.

The Notice is available [here](#). For further information regarding these provisions and the SECURE 2.0 Act in general, please refer to our prior blog posts linked below.

- [SECURE 2.0 Act Amendment Deadlines Extended](#)
- [IRS's Proposed Long-Term, Part-Time Employee Rule](#)
- [SECURE 2.0 Act Plan Sponsor Year-End Compliance: Permissive Plan Sponsor Design Changes and Plan Corrections](#)
- [SECURE 2.0 Act Plan Sponsor Year-End Compliance: Participant Contributions and Distributions](#)
- [IRS Issues Relief for Enforcement of Roth Catch-Up Contribution Requirement for Highly Paid Employees Under SECURE 2.0 Act](#)
- [IRS Transition Relief for Required Minimum Distributions Under SECURE 2.0 Act](#)
- [IRS Issues Interim Guidance on Expanded EPCRS](#)
- [SECURE 2.0 Act: Focus on Governmental 457\(b\) Plans](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Plan Design Changes](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans Distribution and Withdrawal Changes](#)
- [SECURE 2.0 Act: Focus on Pension Plans](#)
- [SECURE 2.0 Act: Permissive Plan Design Changes](#)
- [SECURE 2.0 Act Increases Age for Required Minimum Distributions](#)
- [SECURE 2.0 Act: Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 is Here! What's Next for Plan Sponsors?](#)
- [Major Retirement Legislation Passed by Congress: SECURE 2.0 Act](#)