

SECURE 2.0 Act: Focus on 401(k) and 403(b) Plans Distribution and Withdrawal Changes

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PRACTICES Employee Benefits and Executive Compensation

This article is the second in a series in which we focus on how the SECURE 2.0 Act will impact specific types of plans. The items listed below are provisions that plan sponsors of 401(k) and 403(b) plans should consider and discuss with their third party administrators and outside counsel relating to changes to plan distribution and withdrawal provisions. Please note that some of these provisions will also apply to other types of retirement plans. For a full list of our articles concerning the SECURE 2.0 Act, including additional detail regarding the provisions summarized below, please refer to the links below.

Increase in Age for Beginning Date for Required Minimum Distributions (“RMDs”)

The SECURE 2.0 Act increases the age for determining the required beginning date for RMDs from 72 to 73 for participants who were born in 1951 through 1959 (*i.e.*, an individual “who attains age 72 after December 31, 2022, and age 73 before January 1, 2033”) and from age 73 to 75 for participants who were born in 1959 or later (*i.e.*, an individual “who attains age 74 after December 31, 2032”). Presumably, the incongruity for individuals born in 1959 (who both attained age 73 before January 1, 2033 and attained age 74 after December 31, 2032) will be corrected by a future technical amendment. In addition, in the event a participant receives a penalty for failing to take an RMD, the IRS excise tax is reduced from 50% to 25% on the missed RMD amount for taxable years beginning after the SECURE 2.0 Act enactment date of December 29, 2022 (the “**SECURE 2.0 Enactment Date**”).

Penalty-Free Withdrawals

The SECURE 2.0 Act provides for distribution relief for certain unforeseeable events that allow 401(k) and 403(b) plan participants to access their retirement savings without the imposition of the 10% early withdrawal penalty in the following circumstances:

- **Qualified federally declared disasters.**
- Distributions of up to \$22,000 are permitted in connection with such disasters that occur after January 26, 2021. Such amounts may be repaid to the plan over three years to avoid income taxes.
- Further, hardship withdrawals distributed prior to such a disaster that were used to purchase or construct a home in a qualified disaster area can also be recontributed to the plan, and plans may also provide affected individuals increased loan limits and additional time to repay the loan.
- **Terminal illness.** Distributions made after the SECURE 2.0 Enactment Date on account of terminal illness are permitted.
- **Domestic abuse survivors.** Distributions equal to the lesser of \$10,000, indexed for inflation, or 50% of a participant’s account balance made after December 31, 2023, to a domestic abuse survivor are permitted. Such amounts may be repaid to the plan over three years to avoid income taxes.

- **Emergency expenses.** Distributions may be made after December 31, 2023 for certain emergency expenses, which are unforeseeable or for immediate financial needs relating to personal or family emergency expenses, up to \$1,000 per year. Such amounts may be repaid to the plan over three years to avoid income taxes.
- **Long-term care premiums.** Participants may receive distributions to pay premiums up to \$2,500 per year for certain specified long-term care insurance contracts effective three years after the SECURE 2.0 Enactment Date.

In addition, for hardship withdrawals, employees are permitted to self-certify they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal for plan years beginning after the SECURE 2.0 Act Enactment Date.

Although plan amendments are not required under the SECURE 2.0 Act until the last day of the first plan year beginning on or after January 1, 2025, plan sponsors should consult with their third party administrator to determine which changes are necessary to ensure their plans are in operational compliance and when permissive changes will become available through the third party administrator's platform.

For further information on the above provisions and the SECURE 2.0 Act generally, please refer to our previous articles provided below.

[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 Now?](#)

[Major Retirement Legislation Passed by Congress: SECURE 2.0 Act](#)