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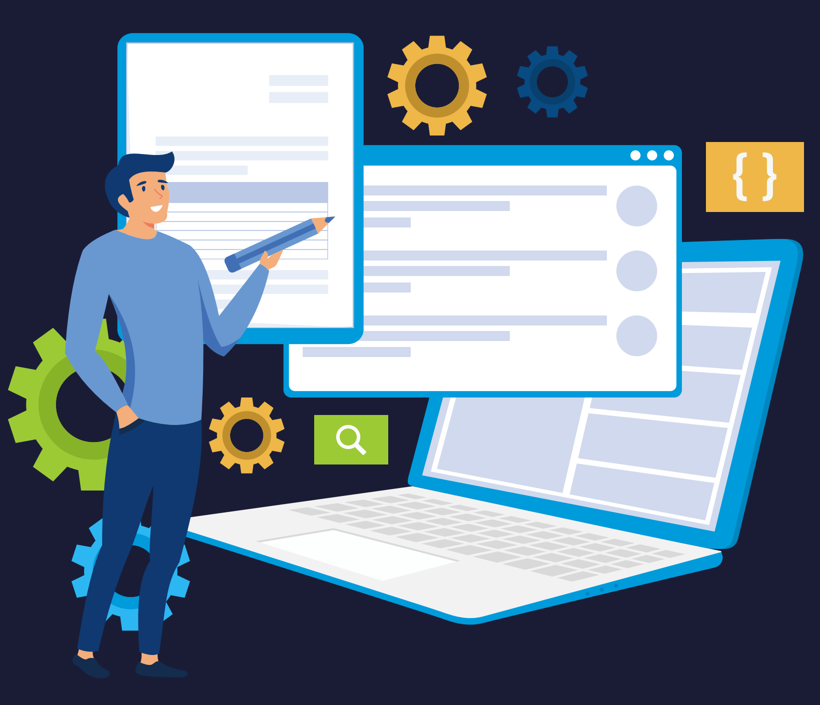
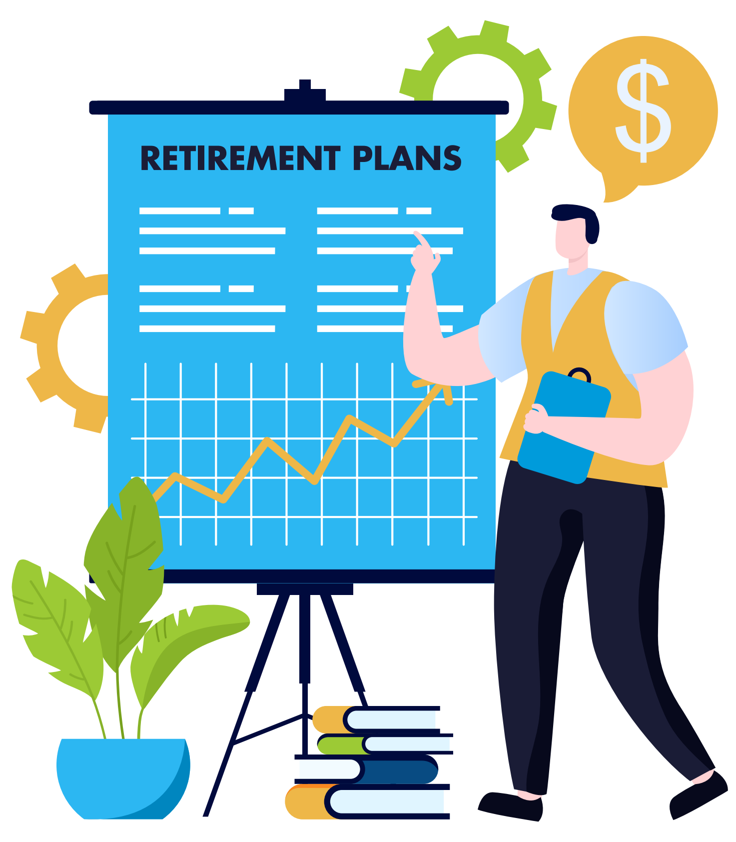
Summary of SECURE Act of 2022



As the foremost authority on tax planning issues, it is our pleasure to present a summary of the crucial tax provisions included in the Consolidated Appropriations Act, 2023 (P.L. 117-328). This $1.7 trillion omnibus spending legislation includes a significant number of provisions (Division T) that impact work-sponsored retirement plans and IRAs. This new legislation has been dubbed the SECURE 2.0 Act of 2022, in recognition of its sweeping impact, similar to the Setting Every Community Up for Retirement Enhancement Act that was passed in 2019

Changes to Retirement Plans

Changes to Retirement Plan Contribution Limits



The recent legislative changes provide for the allowance of Roth contributions. Specifically, the new law permits employer matches to be made to Roth accounts. This provision is effective immediately upon each employer plan's adoption to their plans. Additionally, **SEP** and **SIMPLE** plans are now authorized to accept after-tax Roth contributions, providing further flexibility to taxpayers.

There have been changes to the catch-up contributions for various types of retirement plans. Starting in 2024, the catch-up amount for **Traditional and Roth IRAs** will be indexed for inflation on an annual basis, providing a greater opportunity for individuals to save for retirement.

In addition, beginning in 2025, **people aged 60 to 63** will be able to contribute an additional minimum of **$10,000 to 401(k)** and similar employer-sponsored plans (and at least $5,000 extra for **SIMPLE** plans) each year to their work-based retirement plans. Moreover, starting in 2024, all catch-up contributions for those making more than **$145,000** will be after-tax (Roth contributions), further increasing the flexibility and options available to taxpayers. These changes demonstrate a strong commitment to encouraging and supporting retirement savings for all Americans.

Changes to contributions to **SIMPLE** plans. Under current law, employers with **SIMPLE** plans are required to make employer contributions to employees of either 2% of compensation or 3% of employee elective deferral contributions. However, the **SECURE 2.0** Act now permits an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution does not exceed the lesser of up to 10% of compensation or $5,000 (indexed).

Moreover, **SECURE 2.0** increases the annual deferral limit and catch-up contribution at **age 50** by 10%, but only in the case of an employer with no more than 25 employees. For employers with 26 to 100 employees, they would be permitted to provide higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution. These changes apply beginning in 2024 and similarly apply to the contribution limits for **SIMPLE** 401(k) plans. Overall, these changes provide greater flexibility to employers and employees alike, fostering a culture of robust and accessible retirement savings.

Change to retirement benefits for domestic employees. Effective immediately, employers of domestic employees such as nannies may now provide retirement benefits for their employees under a **SEP**. This change recognizes the important contributions of domestic employees and ensures that they too have access to important retirement savings opportunities. Employers can now take advantage of this change to further support and invest in their valued employees.

Beginning in the 2025 plan year, most 401(k) and 403(b) plans will be required to automatically enroll newly eligible employees at a rate of at least 3% of their pay. Additionally, these plans must include an annual automatic increase of at least 1% until the participant reaches a contribution level of at least 10% of their pay. It's important to note that certain exceptions apply, such as governmental plans of small businesses with 10 or fewer employees and plans of new employers in business for less than three years. These changes are designed to encourage retirement savings and make it easier for individuals to achieve greater financial security in their later years.

The Consolidated Appropriations Act, 2023 (P.L. 117-328) includes a provision for a new type of employer-sponsored retirement plan. This new plan, known as the "Starter 401(k)," will be available starting in 2024 and is designed to be a bare bones plan option. Unlike traditional 401(k) plans, the Starter 401(k) does not require employer contributions or year-end testing. However, employees are still able to contribute **up to $6,000** (indexed for inflation) to their account. This new plan option provides a simple and cost-effective way for employers to offer retirement benefits to their employees, while also giving employees the opportunity to save for their future.

Effective 2023, the Consolidated Appropriations Act, 2023 (P.L. 117-328) permits employers to offer small, immediate financial incentives to employees who contribute to a 401(k) or 403(b) plan. To qualify, the incentive must be de minimis in value and cannot be funded with plan assets. This new provision allows employers to encourage employee participation in retirement plans by providing a small incentive without incurring significant costs. This change could help more employees save for retirement and improve overall financial wellness.

As part of the **SECURE 2.0** Act of 2022, the Consolidated Appropriations Act, 2023 (P.L. 117-328) provides a new provision to increase participation in employer-sponsored retirement plans for part-time workers. Starting in 2025, employees who work at least 500 hours per year for two consecutive years will be eligible to participate in their employer plan. This change will shorten the waiting period for part-time workers to gain access to retirement savings opportunities, potentially increasing participation and retirement savings among this group of employees.

Changes to Retirement Plan Distributions

SECURE 2.0 makes several changes related to required minimum distributions (RMDs) for retirement plans:

1. Increased age for RMDs: The legislation raises the age at which individuals must begin taking RMDs from 72 to 73 beginning in 2023 and then to 75 in 2033.
2. No RMDs from Roth accounts: The Act eliminates the requirement for savers to take minimum distributions from their Roth accounts in work-based plans. Plan participants already subject to Roth RMDs may discontinue distributions in 2024.
3. Reduction of RMD excise tax: The new law reduces the RMD excise tax from 50% to 25% in 2023 and further to 10% if account holders take the full required amount and report the tax by the end of the second year after it was due and before the IRS demands payment.
4. Statute of limitations for RMD/excess contributions violations: The statute of limitations for RMD violations has been revised to three years from the time the taxpayer files their income tax return for the year the violation occurs, and for excess contributions to six years from the date the taxpayer files their income tax return for the year the violation occurs. This change is effective immediately.
5. Surviving spouse treated as participant: Effective in 2024, a spousal beneficiary may elect to be treated as the deceased participant for purposes of RMDs.
6. Removal of certain RMD barriers for annuities: The Act permits the aggregation of distributions from a retirement account that holds an annuity contract for purposes of determining minimum distributions. Also, the regulatory actuarial test for life annuity payments under a commercial annuity has been modified to permit additional forms of payment that may increase over time. These changes are effective upon enactment.

SECURE 2.0 provides several updates and modifications to the regulations related to retirement accounts:

Qualifying longevity annuity contracts (QLACs): The legislation repeals the 25 percent contribution limit and allows up to $200,000 (indexed) to be used to purchase a QLAC. The impact of a divorce or separation on a joint and survivor QLAC is clarified, and RMD regulations are modified to allow free-look periods of up to 90 days. This provision generally applies to contracts purchased or received in an exchange on or after the date of enactment.

Increased flexibility for federal disaster areas: Participants in federal disaster areas declared after January 25, 2021, can withdraw up to $22,000 without a 10% early withdrawal penalty and may repay such withdrawal within three years to avoid income tax. They can also take a loan from a defined contribution plan up to the lesser of $100,000 or 100% of the balance and can delay repayment for one year.

Repayment of qualified birth or adoption distributions (QBAD): The QBAD provision is amended to restrict the recontribution period to three years, effective for distributions made after the date of enactment, with a special transition rule for distributions made before the date of enactment.

These updates aim to provide more flexibility and options for retirement savings, particularly in times of need and unforeseen circumstances.

Other Ideas

- Starting in 2024, taxpayers may be able to directly roll over up to a total of $35,000 from 529 plan accounts to Roth IRAs for the same beneficiary, provided the 529 accounts have been held for at least 15 years. Please note that annually, the rollover amounts would be subject to Roth IRA contribution limits and contributions within the last five years are ineligible for the rollover.
- Additionally, the new law permits employer matches to be made to Roth accounts for student loan payments. This provision takes effect immediately upon each employer plan's adoption to their plans.
- Furthermore, SECURE 2.0 increases the mandatory cash-out limit from $5,000 to $7,000 for distributions made after December 31, 2023, for qualified retirement plans that automatically cash-out former employees' retirement accounts with balances below the limit and roll over those account balances into an IRA.
- Lastly, Section 337 of the new law clarifies that a special needs trust (SNT) established for a beneficiary with a disability can provide for a charitable organization to be the remainder beneficiary.
- Starting in 2024, taxpayers may be able to directly roll over up to $35,000 from a 529 plan account to a Roth IRA for the same beneficiary, provided that the 529 account has been held for at least 15 years. Annual rollover amounts will be subject to Roth IRA contribution limits, and contributions made within the last five years will be ineligible for the rollover. Additionally, the new law permits employer matches to be made to Roth accounts for student loan payments, effective immediately upon each employer plan's adoption to their plans.
- The SECURE 2.0 also increases the mandatory cash-out limit from $5,000 to $7,000 for qualified retirement plans for former employees' retirement accounts with balances below the limit. This change will be effective for distributions made after December 31, 2023.
- The law also provides a technical fix for cash balance and other hybrid plans that credit variable interest rates for purposes of backloading rules. These plans can use a reasonable projection of future interest credits, provided the projection does not exceed 6%.
- Additionally, the legislation allows employers to automatically enroll non-highly compensated workers into emergency savings accounts to set aside up to $2,500 in a Roth-type account starting in 2024. Finally, effective for taxable years beginning after December 31, 2025, the eligible age for individuals who become blind or disabled goes from 26 to 46.

More Changes!

The SECURE Act 2.0 addresses the issue of taxpayers abusing charitable deductions for conservation easements by implementing a prohibition on partnerships that claim a charitable conservation easement deduction exceeding two and a half times the property's total basis.

Additionally, the low- and moderate-income savers tax credit is modified, allowing individuals to receive up to $1,000 (or $2,000 for married couples filing jointly) for contributing to their retirement accounts.

This credit will be redesigned as a match in 2027, directly contributing to an individual's retirement account, and available even if there is no income tax obligation.

Lastly, small businesses that offer immediate enrollment and vesting to military spouses in an eligible retirement savings plan will qualify for new tax credits, effective immediately.