5 (OF MANY) CHANGES INCLUDED IN SECURE 2.0 YOU SHOULD BE AWARE OF

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I. WHAT IS SECURE 2.0?

A. SECURE 2.0 Act of 2022 ("SECURE 2.0") was enacted with bi-partisan support by Congress and signed into law by President Biden on December 29, 2022.

B. Generally, it was designed to improve retirement savings options and accomplish three goals:

1. Increase retirement savings;

2. Improve retirement plan rules; and

3. Lower the cost of establishing and maintaining retirement plans.

C. SECURE 2.0 contains 92 provisions dealing with retirement savings and is considered by some to be the most extensive retirement plan and savings legislation since ERISA.

D. Generally, SECURE 2.0 is effective in 2023, but it also provides for other effective dates extending into 2025 and later.

II. **HIGH INCOME EMPLOYEES REQUIRED TO MAKE CATCH-UP CONTRIBUTIONS IN THE FORM OF ROTH CONTRIBUTION**

A. Participants in 401(k), 403(b) or 457(b) plans who reach age 50 during a year may make a "catch-up contribution" in addition to the basic permitted amount.

1. For 2023, the basic permitted amount is $22,5000 and the catch-up contribution amount is $7,500. These amounts are adjusted each year for inflation.

2. Catch-up contributions are a misnomer. To qualify there is no requirement that you missed anything. It is simply based upon reaching age 50.

B. Under SECURE 2.0, to be eligible to make a catch-up contribution, if the plan participant's social security wages exceeded $145,000 (subject to indexing) during the prior calendar year, the contribution must be made in the form of a Roth contribution. The only logical reason for this provision is to provide a short-term revenue raising feature to the new legislation.

C. Impact of recently issued IRS Notice 2023-62:

1. Because of the short implementation period, the plan sponsors and their professional advisors have reported numerous unanswered questions concerning this provision.

2. In the notice, the IRS announced that this provision will be postponed until years beginning after December 31, 2025.

3. Furthermore, the notice indicated that the IRS intended to clarify whether individuals who do not have wages subject to FICA (partners and self-employed individuals) would not be subject to the Roth contribution mandate.

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III. EXPANDING 401(k) PLAN COVERAGE TO INCLUDE LONG-TERM, PART-TIME EMPLOYEES ("LTPTEs")

A. In 2019, SECURE 1.0 was enacted and contained rules requiring 401(k) and some 403(b) plans to allow employees who complete at least 500 hours of service in three consecutive years to contribute.

1. This rule became effective as of January 1, 2024.

2. Only service starting in 2021 and after is taken into account for the three years of eligibility.

3. Employees qualifying for participation in a 401(k) by meeting the requirements of LTPTE status, could still be excluded from any employer contribution (matching, non-elective and safe harbor contributions) as well as being excluded from any discrimination or other compliance test.

4. In the event the employer did agree to make any employer contributions for a LTPTE that was subject to a vesting schedule (matching and non-elective contributions), a vesting year of service could not exceed 500 hours of service for those employees.

B. In SECURE 2.0, even before SECURE 1.0 became effective, Congress further expanded eligibility in 401(k) plans for part-time employees.

1. The three consecutive year rule for eligibility was shortened to two years.

2. This rule becomes effective as of January 1, 2025.

3. Only service starting in 2023 and after is taken into account for the two years of eligibility.

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C. Issues that must be dealt with:

1. What happens if an employer failed to track hours for part-time employees since 2021?

   a. A possible work-around may require an employer to offer deferrals to all part-time employees without any minimum.

   b. One of many questions and issues to be addressed in future IRS guidance.

2. Can a minimum age restriction of 21 keep a LTPTE out after meeting the two or three year service requirement? Yes.

3. Will LTPTE plan participants be counted for determining if a plan is subject to the audit requirements of the Department of Labor? Good question; wait and see.

4. Can plans rely on the LTPTE eligibility rules to keep an employee out of the plan once they've met the one year of service rule (1,000 hours during a plan year)? No. After completing a year of service, the employee must become eligible even if historically they worked part-time.

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IV. **CHANGES IN RMD RULES**

A. Postponing the RMD starting date ("RSD")

1. The SECURE Act changed the RSD from 70½ to 72.

2. SECURE 2.0 increases the RSD first to age 73, then ultimately to age 75.

3. Schedule for increases in the RSD:

Birth Date	RSD Age
Pre-July 1, 1949	70½
July 1, 1949-1950	72
1951-1959	73
1960 and after	75

B. No RMDs required from Roth 401(k) accounts starting in 2024.

1. Inexplicably, current law provides that RMDs are required from Roth 401(k) accounts, but not from Roth IRAs.

a. For some 401(k) participants with Roth accounts, the easy "fix" is to take a distribution from the plan (if available) and then roll that amount into a Roth IRA.

b. The problem with this technique is that if no Roth IRA already exists, by establishing a new Roth IRA, the five-year holding period must be met.

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2. Under SECURE 2.0 starting in 2024, 401(k) plan Roth accounts will no longer be subject to the RMD rules.

   a. A participant who is first required to begin RMDs due to a termination of employment in 2023 will still be required to receive its RMD by April 1, 2024.

   b. There is still some question about whether a plan participant who has been receiving RMDs prior to 2024 may stop taking RMDs. Stay tuned for further IRS guidance.

C. Reduction of the 50% excise tax for the failure to take an RMD

1. Prior to SECURE 2.0, IRC Section 4974 imposed a 50% excise tax on the amount of RMD that was required but unpaid.

2. Beginning in 2023, the excise tax is reduced to 25% and if the failure is corrected during a two-year window, the penalty is reduced to 10%.

D. New starting date for the running of the statute of limitations for a missed RMD

1. Prior to SECURE 2.0, the three-year statute of limitations would only begin to run with the filing of IRS Form 5329. Since this form requires the reporting of the excise tax for the failed RMD, as a practical matter, the statute of limitations would never run.

2. Now the statute of limitations starts with the filing of a taxpayer's Form 1040.

V. **SAVING MORE THROUGH THE $10,000 "BONUS" CATCH-UP CONTRIBUTION LIMIT**

A. The catch-up contribution concept was first introduced in 2002 to help older plan participants (age 50 and older) increase retirement savings as they reached retirement.

1. When first available, it was capped at $1,000 per year but is adjusted annually for cost-of-living increases.

2. For 2023, the limit is set at $7,500.

B. Starting in 2025, the limit will increase for certain 401(k) plan participants.

1. The "bonus" or "super" contribution limit will only be available for participants between the ages of 60 and 63.

2. Their contribution limit will be set at the greater of (i) $10,000 or (ii) 150% of the standard catch-up limit for that year. For example, if the standard limit is $8,000 in 2025, the bonus contribution limit will be $12,000.

3. Like standard catch-up contributions, bonus catch-up contributions for high wage earners will also be subject to the requirement that the contribution be made to a Roth account.

VI. **<u>EXPANDED OPPORTUNITIES FOR "EMERGENCY" DISTRIBUTIONS</u>**

A. Employees, especially those that are far from retirement, often express their concern about "locking away" savings that won't be available for unexpected emergencies.

1. Clearly this has a chilling effect on 40l(k) savings for those employees.

2. Congress and the IRS have attempted to ameliorate those concerns by including a complex set of guidelines that allow plan sponsors to include "hardship distribution" rules in 401(k) plans.

a. Distributable opportunities are generally limited to specified events (expenses to prevent being foreclosed upon or evicted, home-buying expenses for a principal residence, burial or funeral expenses, certain medical expenses, etc.).

b. The fear of violating the hardship distribution rules has limited their availability to and use by plan participants.

B. Recognizing the benefits of incentivizing retirement savings, SECURE 2.0 includes two new ways plan participants can access emergency funds.

1. Starting with plan years beginning in 2024, 401(k) and 403(b) plans may authorize "emergency distributions."

a. Participants can access up to $1,000 of their account including pre-tax contributions without penalty for "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses.

b. No proof is necessary for the plan. Self-certification is acceptable.

c. May only be requested once each calendar year; however, the participant can't request another emergency distribution within three years unless they've repaid the prior distribution.

d. If the distribution is repaid within three years, the participant may avoid taxation by filing an amended return for the year of distribution.

2. Roth Emergency Savings Accounts

a. Also effective for plan years beginning in 2024, a plan may allow non-highly compensated employees to contribute up to $2,500 in after-tax accounts (treated as a Roth contribution).

b. Accounts must be invested in a manner that preserves capital (equity will not be available).

c. Participants must be allowed to withdraw funds from the emergency account at least once a month.

d. All distributions will be penalty free.

e. Employers can't directly contribute to these accounts. If matching contributions are provided under the plan, the match must be made to an account that is part of the non-emergency savings account of the plan.

f. Reasonable administrative expenses may be charged; however, nothing may be charged for the first four withdrawals each year.

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