SECURE 2.0 ACT OF 2022 – WHAT IT MEANS FOR PLAN SPONSORS

On December 29, 2022, President Biden signed a federal spending bill that included the SECURE 2.0 Act of 2022. This is a follow-up to the SECURE Act 1.0 (passed in 2019) and contains 92 new provisions intended to promote savings, boost incentives for businesses, and offer more flexibility for those saving for retirement.

Here are some of the biggest changes impacting plan sponsors:

1 AUTOMATIC ENROLLMENT IS COMING

a. **Mandatory Automatic Enrollment** – With certain exceptions for existing plans, small businesses with less than ten employees, and new businesses, all 401(k) and 403(b) plans will be required to automatically enroll participants in the respective plans upon becoming eligible. The initial enrollment percentage must be at least 3%, but not more than 10%.

   In addition, the automatic enrollment amount is increased by 1% until it reaches at least 10%. These provisions begin with plan years beginning after December 31, 2024.

b. **Safe Harbor Corrections** – The IRS correction safe harbor for automatic enrollment failures has been made permanent. Employers are provided a grace period to correct, without penalty, reasonable errors in administering automatic enrollment and automatic escalation features. This is effective for errors after 2023.

2 TAX CREDITS SMALL EMPLOYER RETIREMENT PLANS

a. **Startup Costs Credit** – The existing startup cost credit is increased from 50% to 100% for employers with up to 50 employees. The new credit is subject to a cap of $5,000. This increased credit is available beginning in 2023.

b. **Employer Contribution Credit** – A new additional credit is provided for employer contributions, up to a per-employee cap of $1,000. The full credit is limited to employers with 50 or fewer employees and phased out for employers between 51 and 100 employees. The credit is available for five years, at 100% for the first and second years, 75% in the third year, 50% in the fourth year, and 25% in the fifth year. This is available for tax years after 2022.

c. **Military Spouse Retirement Plan Eligibility Credit** – Small employers are provided a tax credit if they 1) make military spouses immediately eligible for Plan participation within two months of hire, 2) upon plan eligibility, make the military spouse eligible for any matching or profit sharing contribution, and 3) make the military spouse 100% immediately vested in all employer contributions.

   The tax credit is the sum of 1) $200 per military spouse, and 2) 100% of all employer contributions (up to $300) made on behalf of the military spouse, for a maximum tax credit of $500. This is effective for tax years beginning in 2023.

3 COVERAGE FOR LONG-TERM PART-TIME WORKERS (LTPT)

a. **LTPT** – The SECURE Act of 2019 required employers to allow long-term part-time (LTPT) workers with three consecutive years of service (of at least 500 hours) to participate in employers' 401(k) Plans. The SECURE 2.0 Act reduces the service requirement to two years, effective for plan years beginning after December 31, 2024.

4 CHANGES TO REQUIRED MINIMUM DISTRIBUTIONS (RMD)

a. **Higher Age Limit** – Individuals are not required to begin taking withdrawals until the year they turn 73, up from 72 in years prior to 2022. Starting on January 1, 2033, the age further increases to 75. If an individual was already 72 or older prior to 2023, there are no modifications to their required withdrawals. This will go into effect immediately in 2023.

b. **No RMDs from Designated Roth Accounts** – Under current law, required minimum distributions are required for Roth designated accounts held in an employer retirement plan like a 401(k) Plan. Starting in 2024, the designated Roth account will not apply when calculating the required minimum distribution.

5 ROTH CHANGES

a. **Company Contributions as Roth** – Available in 2023, awaiting IRS guidance

- SIMPLE and SEP IRAs will be able to treat employee and employer contributions as Roth.
- Participants in qualified plans **MAY** be provided the option of receiving company matching contributions on a Roth basis.

b. **Catch-Up Contributions as Roth** – Beginning January 1, 2026, all catch-up contributions to qualified plans by individuals earning over $145,000 in the prior year will be subject to Roth tax treatment. Please note that the income threshold of $145,000 is based on current regulations and may be subject to adjustments prior to the provision's implementation.

6 HIGHER CONTRIBUTIONS, RETROACTIVE MODIFICATIONS, MID-YEAR CHANGES

a. **New Catch-Up for 60 – 63-Year-Olds** – A new higher catch-up contribution will be available in 401(k) and SIMPLE plans beginning in 2025 for those aged 60, 61, 62, and 63. The limit is $10,000 or 50% more than the regular catch-up amount.

b. **Retroactive Benefit Increases Permitted** – Beginning in 2024, employers are permitted to make retroactive discretionary amendments to increase participants' benefits by the due date of the employer's tax return.

c. **Retroactive 401(k) Plan for Sole Proprietors** – Unincorporated sole proprietors with no employees may establish a new 401(k) plan after the end of the taxable year, but before the employer's tax filing date. This will be effective in 2023.

d. **Replace a SIMPLE IRA with Safe Harbor 401(k) Mid-Year** – Beginning in 2024, an employer can replace a SIMPLE IRA plan with a Safe Harbor 401(k) Plan mid-year. Previously, employers had to wait until the following calendar year to make a change.

7 OTHER MISCELLANEOUS PROVISIONS FOR EMPLOYERS

a. **Mandatory Distribution Limit Increased** – The mandatory distribution limit is increased from $5,000 to $7,000 beginning in 2024.

b. **Employee Plans Compliance Resolution System (EPCRS) Expanded** – Certain portions of the self-correction program have been expanded, allowing employers to correct more errors without filing with the IRS.

c. **Reform of Family Attribution Rules** – Two stock attribution rules have been updated. The first deals with spouses with separate businesses residing in a community property state. The second deals with the attribution of stock between parents and minor children. These rules will be effective in 2024.

8 OTHER EMPLOYER RETIREMENT PLAN OPTIONS TO HELP EMPLOYEES

a. **Student Loan Assistance** – Beginning in 2024, an employer may elect to make matching contributions concerning qualified student loan payments.

b. **Gift Cards & Promotions** – Employers are now permitted to offer de minimus financial incentives such as low-dollar gift cards to boost participation in workplace retirement plans.

c. **Emergency Distributions** – A plan can offer individuals a penalty-free withdrawal of up to $1,000 for emergency expenses, with the ability to repay the distribution within three years.

d. **Emergency Fund Accounts** – Employers will be provided the option to offer pension-linked emergency savings accounts. These deposits are treated as a Roth-like basis, and the account can hold up to $2,500. The first four withdrawals from the account each year are not subject to any fees or charges.