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Explainer on New Retirement Plan Law Part 1 – Requirements Under SECURE 2.0

Client Alert

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Keeping your retirement plan in compliance with the law can be as challenging as shooting a Nerf gun at a gerbil while riding a runaway kangaroo. Employers with 401(k) plans just finished a wholesale plan restatement in the midst of new requirements imposed under the CARES Act and the SECURE Act, among others. Now SECURE 2.0 has passed into law, bringing an entirely new set of legal requirements and options for retirement plan sponsors to sift through and absorb. This article attempts to slow the kangaroo down, so you can get a better look at just what you're aiming at, and what is still headed your way.

There is still plenty of time to amend your retirement plan in order to reflect changes under SECURE 2.0. In fact, SECURE 2.0 also granted more time to make certain amendments to reflect the prior SECURE Act and the CARES Act changes. Employers have until the last day of the plan year beginning on or after Jan. 1, 2025 (or Jan. 1, 2027, for governmental plans) to adopt amendments, as long as the plan is operated in compliance with those changes in the meantime.

This Client Alert explains the required plan changes. Part 2 will explain some of the optional plan changes allowed under SECURE 2.0.

What mandatory changes became effective immediately? (Or, *what the heck do I have to do now?*)

SECURE 2.0 has at least 88 separate new provisions that affect retirement plans. Only a portion of those are mandates that apply generally to existing retirement plans. And, only a portion of *those* have already gone into effect. That's where we begin this explainer.

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1. Required Beginning Date Changes. Former employees can't leave untaxed money in their employer's retirement plan forever. They must start taking distributions by April 1st of the year after they reach the required minimum distribution (RMD) age. The RMD age recently increased from age 70 ½ to age 72, under the SECURE Act. Starting in 2023, it increased to age 73, for those who turn age 72 after December 31, 2022. It will increase again, to age 75 beginning in 2033. Compliance with this change is required, but a plan that wishes to require earlier distributions can continue to do so.

***Take away:** Former employees must begin take distributions from plans, but they can wait longer than in the past before distributions must start. Distribution forms and explanations need to be updated. If a service provider handles RMDs for your plan, the Service agreement may need to be amended.*

2. Domestic Relations Orders. A qualified retirement plan must recognize a tribal court-issued domestic relations order that otherwise meets the requirements for a qualified domestic relations order (QDRO) assigning a participant's accrued benefit (typically, to a former spouse), as a QDRO, when received after December 31, 2022.

***Take away:** Plans may need to update their QDRO policies and procedures, and their model QDRO forms. Any service agreement regarding processing QDROs for the retirement plan should be reviewed and amended if necessary.*

What mandatory changes become effective soon? (And, what do I need to do to get ready?)

3. Coverage of Long-Term Part-Time Workers. If a part-time employee has at least 500 hours of credited service in two consecutive years, he/she must be permitted to make elective deferrals to any existing employer-sponsored 401(k) or 403(b) plan covering similarly situated full-time employees. This becomes effective for plan years beginning after December 31, 2024. Pre-2021 service is disregarded for both eligibility and vesting purposes. Defined contributions plans need to allow these long-term part-time employees to participate in elective deferrals, but not in employer contributions. They also will not be counted in the plan's annual nondiscrimination testing.

***Take away:** Affected employers need to ensure that they are tracking hours for part-time employees and are submitting hours to the plan's Recordkeeper to facilitate eligibility and vesting determinations. The SECURE Act required part-time employees to have three years, but SECURE 2.0 reduces this to two years (beginning one year later), meaning any analyses previously performed to determine which employees might potentially become eligible to participate will need to be re-done.*

4. Roth Catch-Up Contributions. Catch-up contributions to 401(k), 403(b) and governmental 457 (b) plans by participants over age 50 with prior year compensation over \$145,000 (indexed) must be made as Roth contributions. This was intended to apply after December 31, 2023, but due to a mistake in the language eliminating all catch-up contributions, a technical correction may be required first.

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Take away: Ensuring compliance will require substantive programming and administrative system changes. Election forms and enrollment materials need to be updated.

5. Roth Accounts. Roth accounts in qualified retirement plans will no longer be subject to the RMD rules before death, generally for tax years after December 31, 2023.

Take away: Affected plans need to ensure that distribution forms, RMD notices, and plan administrative procedures are updated to reflect this change. If a service provider handles RMDs for your plan, the Service agreement may need to be amended.

6. Required Minimum Distributions to Spouses. A surviving spouse can elect to be treated as an employee for purposes of the RMD rules, starting after December 31, 2023.

Take away: If RMDs have not yet begun when a participant dies, the surviving spouse may be able to delay when RMDs will be paid from the plan. Distribution forms, RMD notices, and plan administrative procedures may need to be updated. If a service provider handles RMDs for your plan, the Service agreement may need to be amended.

7. Annual Funding Notice. Defined benefit pension plans must include additional information in their annual funding notices, such as the average return on assets for the plan year and the preceding 2 plan years, and whether assets are sufficient to pay vested benefits not guaranteed by the Pension Benefit Guaranty Corporation. These requirements apply for plan years beginning after December 31, 2023.

Take away: The Annual Funding Notice must be revised. Since these new disclosure requirements may increase participants' focus on the plan's funding level, employers may want to be prepared to answer questions.

8. Annual Paper Statements. Defined Contribution plans must provide a paper – not electronic – benefit statement to plan participants for at least one of the four required quarterly statements. This applies for plan years beginning after December 31, 2025.

Take away: The specifics of this new requirement won't be known until the Department of Labor updates the relevant regulations and guidance, which it is required to do before December 31, 2024. For example, participants and beneficiaries might be permitted to opt out of paper statements, in some situations. For plans that now rely on electronic distribution, provisions will need to be made to produce and distribute paper statements. Plan service agreement may need to be amended.

Conclusion

Working with legal counsel, plan sponsors can sort through the full panoply of permitted plan changes to determine which are best suited to their particular plan participant population. Please watch for the upcoming Part 2 of this Client Alert, that will explain most of the optional changes under SECURE 2.0.

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The complete smorgasbord of permitted new plan features can at first glance be overwhelming. By prioritizing the administrative changes that must be made now and those that must be made in the near future, plan sponsors can make the task more manageable. If you have any questions or would like more information, please contact your Butzel attorney, or the authors of this Client Alert.

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