Advanced Sales

SECURE 2.0 ACT OF 2022 SUMMARY

This material reflects our understanding of the **SECURE 2.0 ACT of 2022** provisions enacted as part of the Consolidated Appropriations Act (P.L. 117-328) on **December 29, 2022**. It is not intended to cover all provisions of the act or their potential impacts.

Some provisions may require action by the Treasury Department, the Internal Revenue Service, or both so that they can be fully implemented. We expect the Treasury Department and IRS to provide guidance on areas that may be unclear. We do not know when that guidance will be issued.

Please Note:

- Many provisions in SECURE 2.0 Act of 2022 are not effective until 2024 or later. Subsequent legislation may change those provisions before they become effective
- Some qualified plan provisions are optional. Qualified plans may not adopt them or may adopt less generous provisions
- Qualified plans must be amended to implement provisions affecting those plans
- This material does not reflect the proposed RMD regulations or other information concerning the 2019 SECURE Act provided by the Internal Revenue Service and the Treasury Department

The information provided is not written or intended as specific tax or legal advice. MassMutual, its subsidiaries, employees, and representatives are not authorized to give tax or legal advice. Individuals are encouraged to seek advice from their own tax or legal counsel. Individuals involved in the estate planning process should work with an estate planning team, including their own personal legal or tax counsel.

Last updated: October 30, 2023

Please contact your MassMutual financial professional for more information.

Table of Contents

Retirement Plan and IRA Provisions Affecting Individuals

Required minimum distributions (RMDs) changes

Prior Law:

- RMDs must begin in the year the owner or plan participant turns age 72 and the first RMD must be distributed no later than April 1st of the following year.
- A special rule allows RMDs from qualified plans to be delayed if:
  - The participant is still working at 72 for the plan sponsor, and
  - Does not own at least 5% of the employer sponsoring the plan.

SECURE 2.0 Act of 2022 :

- Raises the age 72 for RMDs to age 73 effective January 1, 2023 for anyone who had not yet reached 72 by December 31, 2022; and to age 75 effective January 1, 2033.
- Continues current law permitting the first RMD to be taken by the following April 1st.
- No change to the special rule delaying distributions for active employees who own 5% or less of the employer.

Examples of when RMDs must start:

- Someone who turned 70 ½ before 2020 had to start taking RMDs for the year that they turned 70 ½.
- Someone who turned 72 in 2022 had to take an RMD for 2022.
- Someone who turns 72 in 2023 and attains age 73 before 2033 will start taking RMDs the year that they turn 73.*

Effective for individuals who attain age 72 after 2022, and for individuals who attain age 74 after 2032. (Act Sec. 107).

Impact of Change:

- Individuals who attained age 72 in 2022 still need to take an RMD by April 1, 2023.
- No RMD is required for anyone turning 72 in 2023. They do not need to take an RMD until 2024 when they turn 73 and can delay it until April 1, 2025.
- The age 75 beginning date applies to individuals who turn 74 after 2032.*

  * Under the Act, an individual born in 1959 is subject to both the age 73 RMD age and the age 75 RMD age, creating uncertainty as to which actually applies.

Indexing of IRA catch-up contributions

Prior Law:

Taxpayers who are age 50 or over on December 31st may contribute an additional $1,000 to a traditional or Roth IRA.

SECURE 2.0 Act of 2022:

IRA Catch-up contribution amount will be indexed for inflation.

Effective for tax years beginning after December 31, 2023. (Act Sec. 108)

Impact of Change:

Allows taxpayers age 50 or over to make larger IRA contributions.

Qualified plan, SIMPLE IRA, and SIMPLE 401(k) catch-up rules

Prior Law:

Taxpayers over age 50 may contribute an additional $7,500 for 2023 (indexed) to their 401(k), 403(b), or governmental 457(b) plans annually. Catch-up contributions to SIMPLE 401(k)s and IRAs are $3,500 for 2023 (indexed).

SECURE 2.0 Act of 2022:

Increases catch-up contribution limits for taxpayers who are 60, 61, 62, or 63.

- **Qualified plans other than SIMPLE 401(k)s:** Greater of $10,000 or 150% of the inflation adjusted regular catch-up amount.
- **SIMPLE 401(k)s and SIMPLE IRAs:** Greater of $5,000 or 150% of the inflation adjusted regular catch-up amount.

The $10,000 and $5,000 amounts are indexed for inflation beginning in 2026.

Effective for tax years beginning in 2025. (Act Sec. 109).

Impact of Change:

Allows taxpayers in their early 60s to make larger catch-up retirement contributions. If effective for 2023:

- Catch-up contribution for 401(k), 403(b), and governmental 457(b) plans would be $11,250 (greater of $10,000 or ($7,500 X 150%))
- Catch-up contribution for SIMPLE 401(k)s and IRAs would be $5,250 (greater of $5,000 or $5,250 ($3,500 X 150%))

Student loan payments treated as plan contributions for matching purposes

Prior Law:

Plan participants must contribute to qualified plans to receive employer matching contributions.

SECURE 2.0 Act of 2022:

- Student loan payments may be treated as elective plan contributions for purposes of determining employer match; Voluntary Employer qualified plan update required.
- Applies to 401(k), 403(b), governmental 457(b) plans and SIMPLE IRAs.

Effective for plan years beginning after December 31, 2023. (Act Sec. 110).

Impact of Change:

- Taxpayers with significant student debt who were unable to fully participate in employer plans may be able to receive employer matches based upon their student loan payments.
- Treating student loan payments as eligible for the employer match may help employers attract and retain employees with significant student loans.

Early distributions for family emergencies

Prior Law:

Obtaining funds from your IRA or qualified plan to meet small family emergencies are subject to income tax and, if under age 59 ½ an additional10% tax.

SECURE 2.0 Act of 2022:

- IRA owners and qualified plan participants may have the ability to take up to $1,000 to meet unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses without incurring the additional 10% tax; qualified plan update required.
- The IRA custodian or plan administrator may generally rely on the taxpayer's self-certification in determining if the distribution qualifies as an emergency personal expense distribution.
- Limited to one distribution per calendar year.
- Unless prior distribution is repaid, another cannot be taken within subsequent 3 calendar years.
- Distributions may be repaid within 3 years to an IRA or retirement plan that the taxpayer may contribute to.

Effective for distributions made after December 31, 2023. (Act Sec. 115).

Impact of Change:

- Intended to encourage contributions by taxpayers reluctant to contribute to retirement savings accounts because they may need to access the funds.
- Provides plan participants and IRA owners with more flexibility to access funds for small financial emergencies.

Achieving a Better Life Experience (ABLE) account age increased

Prior Law:

- States may create qualified ABLE programs, which are tax-advantaged savings programs for those with certain disabilities.
- Distributions from an ABLE account are tax-free if used for qualified expenses of the account's designated beneficiary.
- To qualify, a beneficiary's blindness or disability had to occur before they attained age 26.

SECURE 2.0 Act of 2022:

Increases the age by which blindness or disability must occur to age 46.

Effective for taxable years beginning after December 31, 2025. (Act Sec. 124).

Impact of Change:

Makes ABLE accounts available for more people.

Reduced penalties for failure to take RMDs

Prior Law:

Failure to take RMDs results in a 50% excise tax in addition to income tax on the distribution amount.

SECURE 2.0 Act of 2022:

Reduces excise tax to 25%; 10% in the case of a timely correction: where distribution is taken before the earliest of the mailing of a notice of deficiency, or the date the 25% excise tax is assessed, or before end of second taxable year after the year when tax was imposed.

Effective for taxable years beginning after December 29, 2022. (Act Sec. 302).

Impact of Change:

Reduces the penalty from a failure to take RMDs.

Qualified charitable distribution changes

Prior Law:

Qualified charitable distributions (QCD) of up to $100,000 can be made from an IRA for those over the age of 70 ½.

SECURE 2.0 Act of 2022:

- Permits a one-time IRA distribution of up to $50,000 to a charitable gift annuity or to fund a charitable remainder trust (CRT) with the income payable to account owner or spouse. The charitable gift annuity or charitable remainder trust must be funded exclusively with QCDs.
- Indexes the $100,000 limit for inflation.

Effective for taxable years beginning after December 29, 2022. (Act Sec. 307).

Impact of Change:

Increases flexibility to make charitable gifts with IRA funds. Funding a CRT with $50,000 may not be feasible due to the costs of establishing and administering a CRT, although a charitable gift annuity may be possible.

Repayment of birth or adoption distributions

Prior Law:

IRA and retirement plan distributions can be taken (up to $5,000) for birth or adoption expenses free of the 10% early distribution tax. These amounts can be repaid at any time with the tax on the distribution refunded to the taxpayer.

SECURE 2.0 Act of 2022:

Limits the time to repay the distribution to 3 years from the day after the distribution was received.

Effective for distributions made after December 29, 2022. Distributions taken prior to date of enactment may be repaid prior to January 1, 2026. (Act Sec. 311).

Impact of Change:

Change is intended to provide clarity and to prevent repayments when a refund is not possible because the statute of limitations for the year of the distribution has closed.

Inherited IRAs payable to special needs trusts

Prior Law:

Inherited IRAs are generally required to be distributed within 10 years. Special rules apply to eligible designated beneficiaries, including beneficiaries with disabilities.

SECURE 2.0 Act of 2022:

Inherited IRAs can now be payable to a special needs trust that has a charity as a remainder beneficiary.

Effective for calendar years beginning after December 29, 2022. (Act Sec. 337).

Impact of Change:

Provides flexibility where taxpayers want to create a trust for the benefit of a beneficiary with a disability, with some or all of the remainder payable to charity after the beneficiary's death.

Additional Savings Incentives Match Plan for Employees (SIMPLE) plan employer nonelective contribution allowed

Prior Law:

Employers that sponsor SIMPLE IRAs or SIMPLE 401(k) plans must contribute either 2% of eligible employees' compensation or matching contributions up to 3% of employee compensation.

SECURE 2.0 Act of 2022:

Allows employers to make additional contributions to the SIMPLE IRA accounts of each employee eligible to participate. The additional contribution must be a uniform percentage of compensation, up to 10%, but cannot exceed $5,000 per employee. The $5,000 limit is indexed for inflation, beginning for 2024.

Effective for years beginning after December 31, 2023. (Act Sec. 116).

Impact of Change:

Employers already can make additional contributions to 401(k) plans in addition to their regular contributions. The SECURE 2.0 Act of 2022 change allows employers that offer SIMPLE plans to also make additional contributions.

- We do not know if the employer will need to complete a new form (Form 5304-SIMPLE or Form 5305-SIMPLE) to make additional contributions.

Qualified Longevity Annuity Contract (QLAC) premium limitation changes

Prior Law:

Premiums limited to the lesser of $155,000 or 25% of plan participant/IRA owner's account balance (2023).

SECURE Act 2.O of 2022:

- Repeals the 25% of account balance limitation.
- Increases the maximum premium amount to $200,000 (adjusted for inflation beginning January 1, 2024).

Effective for contracts purchased on or after December 29, 2022. (Act Sec. 202).

Impact of Change:

Allows a retirement saver, concerned about outliving their savings, to invest considerably more of their qualified retirement savings in a QLAC.

New RMD calculation method option for partial annuitization

Prior Law:

Starting in the year after purchase, income received is the RMD for an annuitized IRA. In subsequent years, none of that income can be applied to meet minimum distribution requirements on non-annuitized IRAs.

SECURE 2.0 Act of 2022:

- Can now elect to apply the annuity income received to the taxpayer's aggregate RMD amount.
- The aggregate RMD amount is calculated using prior year 12/31 IRA account balances, including the fair market value on that date of all income annuities purchased.

Effective as of December 29, 2022. (Act Sec. 204).

Impact of Change:

Will generally reduce an IRA owner's total annual RMD, especially in cases where the IRA owner taking RMDs holds an income annuity under a period certain only payout.

New Internal Revenue Code (IRC) § 72(t) early distribution exception for domestic abuse victims

Prior Law:

No provision.

SECURE 2.0 Act of 2022:

- Individuals who self-certify that they are a victim of domestic abuse may withdraw a limited amount, free of the early distribution tax, from their retirement plan (e.g., IRA, 401(k), 403(b) or 457(b)-governmental).
- Distribution must be made within 1 year of any date on which the individual is a victim of domestic abuse.
- The maximum amount that can be withdrawn without penalty is the lesser of:
    - $10,000 (inflation adjusted beginning in 2025), or
    - 50% of the vested account value.
- They may pay back some, or all, of the withdrawn amount, over a 3-year period.
    - Income taxes paid on the amount paid back will be refunded.

Effective starting in 2024. (Act Sec. 314).

Impact of Change:

- Allows domestic abuse victims to access retirement plan funds without imposition of the early distribution tax, potentially providing them with quick access to funds.
- Repaying some or all of the withdrawn amount will minimize the withdrawal's impact on their retirement savings.

IRA prohibited transaction when taxpayer has multiple IRA accounts

Prior Law:

If an IRA owner engages in a prohibited transaction with respect to their IRA, it ceases to be an IRA (i.e., treated as distributed to the individual). There is some uncertainty under pre-SECURE 2.0 law whether the disqualification would extend to all IRA accounts held by the owner or only the portion subject to the prohibited transaction.

SECURE 2.0 Act of 2022:

Clarifies that if the individual has multiple IRAs, only the IRA in which the prohibited transaction occurred is disqualified.

Effective for taxable years beginning after December 29, 2022. (Act Sec. 322).

Impact of Change:

Reduces the potential that a prohibited transaction will disqualify a taxpayer's entire IRA, making the entire IRA potentially taxable and subject to penalties.

Taxpayers using IRA funds in a potential prohibited transaction can segregate those funds in one IRA so their remaining IRA funds are not at risk.

Clarification of Substantially Equal Periodic Payment (SEPP) rule

Prior Law:

A partial rollover or transfer, from a retirement account or nonqualified annuity in which a SEPP distribution has been established under IRC § 72(q) (for nonqualified annuities) or § 72(t) (for IRAs or qualified plans), may void the SEPP exception and cause retroactive application of the 10% early distribution tax from when the distributions began.

SECURE 2.0 Act of 2022:

- Partial rollovers or transfers from a retirement account where the SEPP exception applies are allowed if:
  - The total distributions from the two accounts after the partial rollover or transfer equal the amount required to be distributed from the original account.
- Clarifies that annuity payments can be SEPPs if they are made at least annually and are made for the life or life expectancy of the taxpayer and adds a safe harbor providing that annuity payments that would satisfy the rules for annuity payments from qualified plans under IRC §401(a)(9) are deemed to satisfy SEPP requirements.

Effective for transfers or rollovers after December 31, 2023. (Act Sec. 323).

Impact of Change:

These changes apply to SEPPs from both nonqualified annuities under IRC § 72(q) and IRAs and qualified plans under §72(t). Provides a taxpayer the flexibility to move part of their retirement account subject to SEPP distributions to another investment vehicle without violating the SEPP rules.

New IRC § 72(t) exception for terminally ill

Prior Law:

No provision.

SECURE 2.0 Act of 2022:

- Distributions made to a qualified employer retirement plan participant or IRA owner, on or after the date they are certified by a physician as having a terminal illness, are exempt from the early distribution tax.
- "Terminally ill" means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months (7 years) or less after the date of the certification.
- Distribution can be repaid within 3 years.

Effective for distributions made after December 12, 2022. (Act Sec. 326).

Impact of Change:

- Provides terminally ill individuals the ability to take distributions without being subject to the 10% early withdrawal tax.
- Taxpayers who do not qualify as disabled for purposes of the § 72(t) "disabled" exception may qualify under the terminally ill exception. The 84-month period for when death is reasonably expected is significantly longer than periods used for other purposes.

IRC § 72(t) early distribution tax exception for public safety employees expanded

Prior Law:

The 10% early distribution tax does not apply to a distribution from a governmental plan by a qualified public safety employee if they terminate employment after attaining age 55.

SECURE 2.0 Act of 2022:

- Exception expanded to now also include *private* firefighters**, government** correction officers, and government forensic security employees providing for the care, custody, and control of forensic patients.
- Exception applies at the earlier of age 50 or 25 years of service under the plan.

Effective for distributions made after December 29, 2022. (Act Sec. 308/329).

Impact of Change:

- Many retirement plans covering public safety employees allow them to retire before 59 ½ if they have reached a specific age or after completing a specified number of years of service.
- Permits qualifying public service officers employed by governmental entities and private firefighters to receive distributions from qualifying plans without being subject to the additional 10% tax on early distributions.

New IRC § 72(t) exception for qualified recovery disaster distributions

Prior Law:

No exception to the additional 10% tax on early withdrawals from IRAs or qualified plans due to federally declared disasters. Congress has enacted exceptions for distributions after certain federally declared disasters.

SECURE 2.0 Act of 2022:

Creates an exception to the early distribution penalty for a qualified disaster recovery distribution from a qualified employer retirement plan or an IRA.

- The aggregate distribution amount with respect to any disaster is $22,000; qualified plan update required.
- Unless the taxpayer elects otherwise, the taxable amount of the distribution will be included in the gross income ratable over 3 taxable years.
- They have 3 years from the date of the distribution to pay it back to a qualified employer plan or IRA.
- Additionally, a qualified first-time homebuyer distribution that was not used to purchase or construct a principal residence on account of the qualified disaster may be recontributed to a qualified retirement plan or an IRA.
- Applies to:
    - Individuals whose principal place of residence is in the disaster area, and
    - Sustained an economic loss from the disaster.

Effective for disasters occurring on or after January 26, 2021. (Act Sec. 331).

Impact of Change:

- Allows favorable tax treatment for victims of federally declared disasters to access $22,000 of retirement funds without incurring the premature distribution tax.
    - Tax can be spread over three years.
    - Ability to repay contributions within 3 years.
- Eliminates the need for Congress to enact an exception as disasters occur.

Special rules for plan loans for certain persons affected by disaster

Prior Law:

- Plan loans generally limited to lesser of $50,000 or 50% of the account balance. Loan repayment must begin promptly and be completed within 5 years.
- No permanent provision but Congress has enacted exceptions for loans after certain federally declared disasters.

SECURE 2.0 Act of 2022:

- Allows qualified individuals to take plan loans of up to the lesser of $100,000 or the account balance; qualified plan update required.
- Delays start of loan repayment and loan repayment period.
- Applies to:

- o Individuals whose principal place of residence is in the disaster area, and
- o Sustained an economic loss from the disaster.

Effective for disasters occurring on or after January 26, 2021. (Act Section 331).

Impact of Change:

- Provides affected individuals with the potential ability to take larger loans than normal.

  Qualified individuals can delay starting to repay the loan and the start of the 5-year loan repayment period.

Statute of limitations amendment for excess IRA contributions and missed IRA RMDs

Prior Law:

- The 3-year statute of limitations for excise taxes imposed on excess IRA contributions, or missed IRA RMDs, is 3 years from the date the taxpayer files Form 5329 reporting the excess contributions or missed RMDs.
- Failure to file Form 5329 means that the statute of limitations never starts, exposing the taxpayer to the excise tax for many years.

SECURE 2.0 Act of 2022:

The statute of limitations now begins when the taxpayer files their individual tax return Form 1040 or would have filed a tax return had they been required to. SECURE 2.0 Act of 2022 extends the statute of limitations for assessing the excise tax on excess contributions to 6-years from 3-years.

Effective December 29, 2022. (Act Sec. 313).

Impact of Change:

- Taxpayers often don't realize they made an excess contribution or missed an RMD and never file a Form 5329 to report it, so the statute of limitations period never starts. This allows the IRS to assess the excise tax plus penalties and interest many years after the failure occurred.
- Starting the limitations period when the taxpayer files their Form 1040 for the affected year provides the taxpayer with finality for when excise taxes may be imposed due to these mistakes.

New IRC § 72(t) exception for removal of earnings attributable to an excess IRA contribution

Prior Law:

To avoid a 6% excise tax taxpayer must remove an excess IRA contribution by the tax filing deadline (including extension) of the applicable tax return. Any earnings attributable to the excess contribution must also be removed and are subject to the additional early distribution tax if the IRA owner does not meet one of the exceptions under IRC § 72(t).

SECURE 2.0 Act of 2022:

Any earnings attributable to an excess IRA contribution that is removed by the due date of the return for the year (including extension) are not subject to the early distribution tax.

Effective for any determination of, or affecting, liability for taxes, interest, or penalties made on or after December 29, 2022, regardless of when the act (or failure to act) is based occurred. (Act Sec. 333).

Impact of Change:

Since excess IRA contributions removed in a timely manner are treated as they were never made from an excise tax standpoint, it makes sense that the early distribution tax be waived on any earnings attributable to these distributions.

New IRC § 72(t) exception for qualified long term care distributions from a qualified employer plan

Prior Law:

No provision.

SECURE 2.0 Act of 2022:

The additional tax on early distributions will be waived on retirement plan distributions up to the lesser of:

- The amount paid for certified long term care insurance for the plan participant or their spouse,
- 10% of the present value of the nonforfeitable accrued benefit under the plan, or
- $2,500 (adjusted for inflation after December 31, 2024); qualified plan update required.

Certified long-term care insurance means:

- A qualified long term care insurance contract,
- A chronically ill insurance contract rider that meets certain requirements, or
- A long-term care rider under an insurance contract that meets certain requirement.

Effective for distributions made after December 29, 2025. (Act Sec. 334).

Impact of Change:

If the employer retirement plan allows, participant can withdraw up to $2,500 per year, free of the early distribution tax, to pay premiums for certain long term care coverage beginning on 12/29/25.

Provisions Affecting Employers and Qualified Plans

Automatic enrollment and automatic contribution increases required

Prior Law:

Section 401(k) and 403(b) plans may automatically enroll employees with a minimum elective deferral. Employees may opt out entirely or elect a different deferral percentage. Certain employers who sponsor plans providing automatic enrollment may qualify for a tax credit of up to $500.

SECURE 2.0 Act of 2022:

401(k) and 403(b) plans must provide for automatic enrollment with the following provisions:

- Must permit withdrawals of elective deferrals within 90 days of the first elective contribution.
- The automatic deferral amount must be at least 3% but not more than 10% of compensation unless the participant opts out or elects a different percentage. The deferral amount increases

by 1% annually until it reaches 10% but not more than 15% unless the participant opts out or elects a different percentage.

- Automatic contributions for employees who don't make an investment election will be invested in a qualified default investment alternative; qualified plan update required.

Exceptions: This requirement does not apply to:

- SIMPLE 401(k) plans.
- 401(k) and 403(b) plans established before December 29, 2022 (date of enactment).
- Businesses with less than 10 employees.
- Employers in business for less than 3 years.
- Governmental and church plans.

Effective for plan years beginning after December 31, 2024. (Act Sec. 101).

Impact of Change:

Designed to increase retirement savings by eliminating the need for employees to elect retirement plan contributions and increasing the contribution amount gradually until it reaches 10-15% of compensation.

Modified credit for small employer retirement plan start-up costs

Prior Law:

Employers with no more than 100 employees who receive at least $5,000 of compensation qualify for a credit for administrative and retirement education costs incurred to start a defined contribution or defined benefit plan. The credit is 50% of costs to establish or administer an eligible retirement plan and educate employees about the plan, up to a $5,000 annual cap.

SECURE 2.0 Act of 2022:

- Modifies credit for start-up costs.
    - Reduces maximum number of employees to 50.
    - Increases credit percentage to 100% of eligible costs.
    - Deduction for start-up costs reduced by amount of the credit.
- Adds credit for employer contributions to defined contribution plans (not pension plans) for year plan is established and next four years.
    - Applies to employer contributions for employees whose wages do not exceed $100,000 (indexed for inflation after 2023).
    - Maximum credit per eligible employee is $1,000.
    - Employee contributions do not qualify for the credit.
    - Credit reduced if employer had more than 50 employees in preceding year and eliminated if there were more than 100 employees .
    - Credit phased out according to the following schedule:

Year plan established	100%
2nd plan year	100%
3rd plan year	75%

4th plan year	50%
5th plan year	25%
Subsequent plan years	0%

Effective for taxable years beginning after December 31, 2022. (Act Sec. 102).

Impact of Change:

Increases incentives for employers to set up plan. Provides incentive for employer to contribute to defined contribution plan.

S Corporation stock sold to ESOP can qualify for tax deferral

Prior law:

An individual who sells stock in a S corporation that isn't publicly traded to an ESOP may not defer the gain on the sale by investing the proceeds into qualified replacement property, generally stock or other securities issued by U.S. operating corporations.

SECURE 2.0 ACT OF 2022:

- Allows qualifying S corporation shareholders to defer gain on the sale of stock sold to an ESOP.
- No more than 10% of the gain may be deferred by investing in qualified replacement property.

Effective for sales made after December 31, 2027. (Act Sec. 114).

Impact of Change

Allows S corporation shareholders who sell their stock to an ESOP to defer some of the gain by investing in qualified replacement property.

Employers may make additional contributions to SIMPLE plans

Prior Law:

Employers that sponsor SIMPLE IRAs or SIMPLE 401(k) plans must contribute either 2% of eligible employees' compensation or matching contributions up to 3% of employee compensation.

SECURE 2.0 Act of 2022:

Allows employers to make additional contributions to the SIMPLE IRA accounts of each employee eligible to participate. The additional contribution must be a uniform percentage of compensation, up to 10%, but cannot exceed $5,000 per employee. The $5,000 limit is indexed for inflation, beginning for 2024.

Effective for years beginning after December 31, 2023. (Act Sec. 116).

Impact of Change:

Employers already can make additional contributions to 401(k) plans in addition to their regular contributions. The SECURE 2.0 Act of 2022 change allows employers that offer SIMPLE plans to also make additional contributions.

- We do not know if the employer will need to complete a new form (Form 5304-SIMPLE or Form 5305-SIMPLE) to make additional contributions.

Increased SIMPLE plan contributions

Prior Law:

For 2023, employee contributions to a SIMPLE IRA or SIMPLE 401(k) cannot exceed $15,500. The catch-up contribution for employees who are at least 50 is $3,500. The employer:

- Must match employee contributions up to 3% of compensation (may be reduced to as little as 1% in 2 of 5 years), or
- Contribute 2% of compensation, regardless of the employee's contribution.

SECURE 2.0 Act of 2022:

Increases employee contribution limit by 10% above the amount that would otherwise be allowed for 2024 in either of these situations:

- The employer had no more than 25 employees, or
- The employer had more than 25 employees and either:
    - Matches employee contributions up to 4% of compensation (may be reduced in 2 of 5 years), or
    - Contributes 3% of compensation, regardless of the employee's contribution.

For this purpose, only employees who earned at least $5,000 of compensation from the employer in the preceding year are included in determining the number of employees.

Employers who had 25 or fewer eligible employees in one year and then exceed 25 eligible employees in the next year are treated as having 25 employees for two years after the last year that they had 25 or fewer employees.

The increased amounts will be adjusted for inflation; qualified plan update required.

Effective for years beginning after December 31, 2023. (Act Sec. 117).

Impact of Change:

Employees of qualifying employers can make larger SIMPLE contributions. Employees of employers with more than 25 employees can only make larger contributions if the employer makes larger contributions.

The SIMPLE contribution limits will depend on the number of employees and whether an employer with more than 25 employees elects the larger employer contributions.

Result: This provision is effective for years beginning in 2024. If it were effective for 2023, the contribution limits for employees of qualifying employers would be:

- $17,050 for regular contributions.
- $3,850 for catch-up contributions.

SEP contributions for domestic employees

Prior Law:

Contributions to retirement plans that are not made in connection with the employer's trade or business are not deductible and are subject to a 10% tax. This would apply to contributions on behalf of household employees, such as nannies and housekeepers. Under prior law there was an exception from the 10% tax for contributions to SIMPLE IRA and 401(k)s.

SECURE 2.0 ACT OF 2022:

Permits employers to make contributions to SEP IRAs for household employees without being subject to the 10% tax.

Effective for taxable years beginning after December 29, 2022. (Act Sec. 118).

Impact of Change:

Allows individuals to set up SEP IRAs for household employees, subject to normal SEP IRA contribution limits. This provision does not make the contributions deductible.

Starter 401(k) Plans and Safe Harbor 403(b) Plans

PRIOR LAWS:

No provision.

SECURE 2.0 Act of 2022:

SECURE 2.0 Act of 2022 creates a new type of 401(k) plan and a new type of 403(b) plan intended to make it easier for employers to offer retirement savings plans for their employees.

- Starter 401(k) deferral-only arrangements must treat all eligible employees as having elected to have the employer make elective deferrals equal to a percentage of compensation.
- Employees may elect out of all contributions or choose a different contribution percentage.
- The default deferral percentage must be between 3 and 15%.
- It must be applied uniformly to all eligible employees.
- All employees who meet the age and service requirements must be eligible to participate unless they can be excluded from regular 401(k) plans.
- Employers cannot make either matching or non-elective contributions.
- Employee contribution limits:
    - $6,000 annually, indexed for inflation beginning in 2025.
    - $1,000 catch-up contribution for employees 50 or over, indexed for inflation.
- **Safe-harbor deferral-only 403(b) plans** are subject to similar requirements as starter 401k deferral only arrangements.
- All employees must be able to participate unless they can be excluded under the normal 403(b) eligibility rules.
- Starter 401(k) plans and safe-harbor 403(b) plans are not subject to the top-heavy rules.

Effective for plan years beginning after December 31, 2023. (Act Sec. 121).

Impact of Change:

Intended to allow employees to make deferrals into a 401(k) plan or 403(b) plan and minimize the employer's cost. It is unclear if the $1,000 catch-up contribution for employees 50 or over will be indexed in 2024 or if the indexing begins in 2025

Expanding ability of certain part-time employees to contribute to 401(k) and 403(b) plans

Prior Law:

The 2019 SECURE Act requires 401(k) plans to generally permit employees ("long-term part-time employees") to contribute to a 401(k) plan if:

- They have worked at least 500 hours each year with the employer for at least three consecutive years.
- Is at least 21 before the end of the three-year period.

This allows employees to become eligible to make 401(k) contributions even if they have not worked the 1,000 hours in a year necessary for a year of service.

This provision was effective for plan years beginning after December 31, 2020. However, it provided that the three-year testing period did not include years before 2021. This meant that long-term part-time employees could not contribute to a 401(k) before 2024.

SECURE 2.0 Act of 2022:

SECURE 2.0 Act of 2022 reduces the three-year period to two-years. It also provides that these rules apply to 403(b) plans which are subject to ERISA; qualified plan update required.

Effective for plan years beginning after December 31, 2024. (Act Sec. 125).

SECURE 2.0 Act of 2022 also clarifies other provisions concerning this rule:

- Employers are not required to make non-elective or matching contributions for these employees.
- For vesting purposes, 12-month periods beginning before 2021 are disregarded.

Effective for plan years beginning after December 31, 2020, as if included in the original SECURE Act. (Act Sec. 125).

Impact of Change:

Reducing the three-year service period to two-years effective in 2025 makes it easier for long-term part-time employees to qualify to contribute to 401(k) or 403(b) plans.

Employers may offer emergency savings accounts linked to retirement plans

Prior Law:

No provision.

SECURE 2.0 Act of 2022:

Employers may offer emergency savings accounts in 401(k) plans or profit-sharing plans that offer individual accounts; qualified plan update required.

Eligible participants are:

- Individuals who meet the plan's age, service, and other eligibility requirements, and
- Not a highly compensated employee.
  - A highly compensated employee is an employee who received compensation exceeding a specified amount for the preceding year.
  - In 2023, a highly compensated employee is one whose 2022 compensation exceeded $150,000.

    - Someone who becomes a highly compensated employee can no longer contribute to a pension-linked emergency savings account but their ability to withdraw the account balance is not affected.

Enrollment:

- Employers may automatically enroll an eligible participant in automatic contributions of up to 3% to a pension linked emergency savings account, or
- Allow eligible participants to enroll in a pension-linked emergency savings account.

Employees automatically enrolled in a pension-linked emergency savings account may opt out or choose a different contribution rate or amount.

Account requirements:

SECURE 2.0 Act of 2022 provides that pension-linked emergency savings accounts shall:

- Not have a minimum contribution or account balance.
- Allow participants to withdraw some or all of the account balance at least once per calendar month.
- Be held in cash, an interest-bearing account, or investment product offered by a State or federally regulated financial institution.
- Allow at least four withdrawals per year without any fees or charges.
- Be treated as a separate account from the employee's retirement account under the plan.

Contributions to pension-linked emergency savings accounts:

- Are made on an after-tax (Roth) basis.
- The account balance from employee contributions is limited to the lesser of:
    - $2,500 (adjusted for inflation beginning in 2025).
    - A limit set by the employer.
- When the limit is reached, the employee can choose to stop contributions or have any excess contributions made to their designated Roth account under the plan.
- Participants cannot transfer money into the pension-linked emergency saving account from any account under the employer's retirement plan.
- When the employee leaves the employer, they may take the account balance in cash, roll it to their designated Roth account under the plan, or to a Roth IRA.
- Account distributions cannot be rolled over to an IRA, Roth IRA, or qualified plan, except for distributions rolled over to a Roth IRA or designated Roth account when the employee leaves the employer.

Tax treatment of accounts:

- Contributions are made on an after-tax (Roth) basis.
- Withdrawals are considered to come from employee contributions first and then from account earnings.
- Account distributions are not subject to the additional 10% tax for premature distributions.

Employer matching contributions:

- An employee's contribution to a pension-linked emergency savings account qualifies for the same employer matching contributions as employee contributions to the retirement portion of the plan.
- The employer matching contributions are made to the employee's regular retirement plan account, not the pension-linked emergency savings account.

Effective for plan years beginning after December 31, 2023. (Act Sec. 127).

Impact of Change:

Allows employees the ability to save for non -retirement purposes through an account linked to an employer's retirement plan and to access the account without income tax or the additional tax on early distributions. Employers may provide for automatic contributions to the account, providing employees the ability to opt out or change the contribution amount.

Replacing SIMPLE retirement arrangement with safe harbor 401(k) plan during a year

Prior Law:

An employer cannot change from a SIMPLE IRA or SIMPLE 401(k) to another employer-sponsored retirement during a year. Any changes must occur after the end of the plan year.

SECURE 2.0 Act of 2022:

An employer may elect, at any time during a year, to terminate a SIMPLE retirement account arrangement if they establish, as of the day after the termination date, a safe harbor 401(k) plan. A pro-rata calculation, based on the number of days in each plan, is done to determine the applicable employee elective deferral limit for each plan.

Effective for plan years beginning after December 31, 2023. (Act Sec. 332).

Impact of Change:

An employer does not have to wait until the start of a new year to replace a SIMPLE retirement arrangement with a safe harbor 401(k) plan that may better meet its objectives.

Retroactive first year elective deferrals for sole proprietors

Prior Law:

An employer may establish a new 401(k) plan after the end of their taxable year, but before the tax filing deadline for the year, and the plan will be treated as having been established on the last day of the taxable year.

The plan may be funded by employer contributions for the first year if made before the tax filing deadline.

Employee contributions to the plan must be made by December 31st so no employee contributions can be made for the first plan year if the plan is established after the close of a tax year.

SECURE 2.0 Act of 2022:

For a 401(k) plan's first year, a sole owner of an unincorporated business may make elective deferrals under a 401(k) plan (until the due date of their individual income tax return (without extensions)). The owner must be the only employee.

Applies to both sole proprietors and sole members of single member LLCs and to both solo 401(k) plan and regular 401(k)s.

Effective for plan years beginning after December 29, 2022. (Act Sec. 317).

Impact of Change:

For a 401(k)'s first plan year, a 401(k) participant may make retroactive 401(k) contributions by the due date of their individual income tax return (without extensions). This is like the ability to make IRA contributions until the due date of their income tax return without extensions.

Employer contributions can be made on behalf of the solo 401(k) participant into a plan established, and funded, after year-end but before the employer's tax filing deadline (including extensions).

529 plan rollover to Roth IRA

Prior Law:

- 529 plan funds are subject to income tax and penalty if not used for qualified educational expenses.
- The plan beneficiary can be changed to the beneficiary's spouse or certain members of their family.
- Funds cannot be rolled over to a retirement account.

SECURE 2.0 Act of 2022:

Allows for 529 plan funds to be rolled over to a Roth IRA for the 529 plan beneficiary.

- The 529 plan must have been maintained for at least 15 years.
- Eligible rollover limited to amounts contributed (and related earnings) more than 5 years prior to the rollover.
- Rollovers are limited to Roth IRA annual contribution (currently $6,500, indexed) but are not subject to the Roth IRA income limitation.
- Total rollovers over the beneficiary's life cannot exceed $35,000.

Effective with respect to distributions after December 31, 2023. (Act Sec. 126).

Impact of Change:

Increases the attractiveness and flexibility of funding and maintaining a 529 account.

SIMPLE and SEP Roth IRAs

Prior Law:

All contributions to a participant's SIMPLE IRA or SEP IRA are pre-tax funds invested in a Traditional IRA.

SECURE 2.0 Act of 2022:

Employers may offer SIMPLE IRA and SEP IRA plan participants the ability to treat some, or all, of the plan contributions as after-tax Roth IRA contributions.

Effective for taxable years beginning after December 31, 2022. (Act Sec. 601).

Impact of Change:

SEP IRA participant already can convert some, or all, of the employer contribution immediately to a Roth IRA (same for contributions to a SIMPLE IRA that has been in existence for 2-years). This provision simplifies the process by eliminating the needs to convert pre-tax contributions.

High wage earners catch-up contributions treated as Roth

Prior Law:

Plan participants 50 and over may make elective deferral catch-up contributions for 401(k), 403(b) and governmental 457(b) on a pre-tax or Roth basis (if permitted by the plan).

SECURE 2.0 Act of 2022:

Catch-up contributions for eligible plan participants, whose wages from the preceding calendar year from the employer sponsoring the plan exceeded $145,000 (indexed for inflation for years beginning after December 31, 2024) must be made as designated Roth contributions.

Catch-up contributions will not be allowed for any eligible plan participant unless the plan offers a designated Roth option.

Effective for taxable years beginning after December 31, 2025. (Act Sec. 603).

Impact of Change:

Plans will be required to offer a Roth option to allow catch-up contributions. This provision does not apply to SIMPLE IRA catch-up contributions.

Optional treatment of employer matching or nonelective contributions as Roth contributions

Prior Law:

All 401(k), 403(b) and governmental 457(b) employer matching and nonelective contributions (employer contributions not tied to the amount of the participant's elective deferrals) must be made on a pre-tax basis.

SECURE 2.0 Act of 2022:

A plan may allow plan participants to direct that some, or all, of their fully vested employer matching and/or nonelective employer contributions be made as designated Roth contributions; qualified plan update required.

Effective for contributions made after December 29, 2022. (Act Sec. 604).

Impact of Change:

- Participants who prefer Roth accounts over pre-tax accounts will no longer have to wait until they can convert employer contributions to a Roth account when permitted, which may not be until they can receive a distribution from the plan.
- Limiting this provision to a participant's fully vested employer contributions may be a significant additional administrative burden for employers and plan administrators.
- Although this provision is effective now, it will likely take employers and plan administrators some time to decide if they want to offer this option and then to implement it.