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SECURE ACT 2.0: IMPACT ON RETIREMENT PLANS

On December 29, 2022, the President signed legislation that makes major changes to the current laws governing retirement plans. These changes have an impact on all retirement plans and will require plan amendments at some point in the future. If you have started to dive into the SECURE Act 2.0 for yourself – a cry for help if there ever was one – then you know that trying to grasp all of these changes is a daunting task. However, our team is diligently studying the 359-page statute. In the coming months, we are planning to release a series of Alerts detailing its provisions. We will also offer several in-person seminars and online webinars focused on the ways the Act is likely to affect employers and their 401(k) plans (as well as 403(b) and 457 plans).

This Alert is intended to give you an initial heads up on what is in the SECURE Act 2.0. It contains our preliminary thoughts and impressions as to the changes that struck us, on first reading, as being the most significant for most employers and their 401(k) plans:

(1) ***Catch-Up Contributions – Roth Basis Only (But Only for Some Participants).*** Beginning in 2024, catch-up contributions must be made on a Roth basis (and not on a pre-tax basis) if the Participant's "wages … for the preceding calendar year from the employer sponsoring the plan exceed $145,000." The $145,000 will be indexed annually for inflation beginning in 2025. Note that, although earlier drafts of the bill would have required all participants making catch-up contributions to do so on a Roth basis, the bill as enacted applies this prohibition on a participant-by-participant basis.

(2) ***Higher Catch-Up Limit for Participants at Age 60 (But Only Through Age 63).*** This provision will take effect for the 2025 plan year. It is also an optional provision, which means that employers will need to decide whether their plans should be amended to allow this.

(3) ***Employer Matching Contributions – Option to Receive on a Roth Basis.*** Beginning (technically) immediately, plans may allow their participants to elect to receive their employer matching contributions on a Roth basis rather than on a pre-tax basis. This is also an optional provision. There are lots of questions as to how this will work in practice

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and, until the Treasury and IRS issue guidance, those questions probably cannot be answered. Realistically, this means that it will probably not be possible to implement this provision until 2024 at the earliest.

(4) ***Student Loans – Employer Matching Contributions for Payments on Student Debt.*** This provision allows employers to make matching contributions to a defined contribution plan based on their employees' qualified student loan payments. This provision will take effect in 2024, and is also an <u>optional</u> provision. Until the Treasury issues regulations providing additional "guidance," it may be difficult for interested employers to move forward with implementing this provision.

(5) ***Required Minimum Distributions for Roth Amounts Held in a 401(k) Plan.*** Under current law, participants who have reached their "required beginning date" are required to receive "required minimum distributions" (or "RMDs") from Roth amounts that are held in a 401(k) plan, even though they would not be required to receive RMDs if those same amounts had been rolled over into a Roth IRA. Beginning, however, in 2024, the treatment of Roth amounts held in a 401(k) plan will be equalized. As a result, participants will not be required to receive RMDs during their lifetime from Roth amounts held in a 401(k) plan.

(6) ***Increased Age for Required Minimum Distributions: Age 73 in 2023 and Age 75 in 2033.*** The change from age 72 to age 73 applies "to distributions required to be made after December 31, 2022, with respect to individuals who attain age 72 after such date."

(7) ***Distributions Following a Federally Declared Disaster.*** The rules adopted by Congress in the Act are similar to the rules that the IRS has already adopted through regulatory guidance, except that Congress has removed the 10% penalty tax for early distributions that might otherwise apply. These rules are effective for disasters occurring on or after January 26, 2021. Note that participants receiving a "qualified disaster recovery distribution" will have the right to repay such distribution.

(8) ***Emergency Savings Accounts for Non-Highly Compensated Employees.*** This provision allows employers to amend their 401(k) plans to establish an "emergency savings account" for non-highly compensated employees. This provision is <u>optional</u> and will take effect beginning in 2024; however, concern has already been expressed that the Treasury will not be able to issue necessary regulations that quickly, with the result that the actual effective date may be delayed.

(9) ***Distributions for Emergency Expenses (Up to $1,000 Each Calendar Year).*** This provision will take effect for distributions made after December 31, 2023. It appears to be an <u>optional</u> provision, although it would seem to make sense for any plan that currently permits hardship distributions to also permit distributions for "emergency personal expenses." Participants receiving an "emergency personal expense distribution" will have the right to repay such distribution.

(10) ***Paper Statements – Requiring Plans to Provide on a Periodic Basis.*** This provision will take effect for "plan years beginning after December 31, 2025." Under this provision, paper statements will need to be provided at least once per year for 401(k) plans, unless a participant requests electronic delivery of the statements.

(11) ***Participation in the 401(k) Plan by Long-Term Part-Time Employees.*** Changes have been made to the provisions in the original SECURE Act addressing participation by "long-term part-time employees" in a 401(k) plan. For example, the Act lowers the years of service requirement for part-time workers working 500 or more hours from three years to two years. This change is effective for plan years beginning after 2024.

Keep an eye out for our Alerts, in-person seminars, and online webinars in the coming weeks and months in which we will explain in more detail the key provisions of the Act, how they affect your retirement plans, and what steps you need to take to comply.

We hope this initial heads up is helpful. If you have any questions, please do not hesitate to contact one of the following attorneys on our Employee Benefits team: Eric Namee, Steven Smith, Brad Schlozman, and Blair Bohm.