As the SECURE 2.0 Act makes its way through the headlines, plan sponsors may start to feel overwhelmed by the many provisions contained within this Act. To help alleviate some of this concern, plan sponsors may want to focus on the provisions that are both mandatory and will be effective within the next 2 years.

Many of the provisions effective in 2024 will make a profound impact on plan design and how participants will save for the future. It's important for plan sponsors and service providers to become familiar with these provisions so they can plan accordingly.

Although this new legislation includes over 90 provisions, the following provides a high-level summary of selected provisions that are effective in 2024.

- Indexing IRA catch-up limit - The current limit on IRA contributions is increased by $1,000 for individuals who are age 50 and older. This Act allows the limit to be indexed to inflation, meaning it could increase every year, based on federally determined cost-of-living increases.

  Effective for taxable years beginning after December 31, 2023.

  Applicable plans: IRAs

- Treatment of student loan payments as elective deferrals for purposes of matching contributions – This section allows employees to receive matching contributions on student loan repayments. An employer is permitted to match student loan payments under 401(k), 403(b), SIMPLE, and 457(b) plans as if those payments were elective deferrals. For purposes of the nondiscrimination test applicable to elective contributions, a plan is permitted to test separately the employees who receive matching contributions on student loan repayments.

  Effective for contributions made for plan years beginning after December 31, 2023.

  Applicable plans: 401(k), 403(b), governmental 457(b) plans, and SIMPLE IRAs

- Withdrawals for certain emergency expenses. Generally, an additional 10% penalty tax applies to early distributions from tax-preferred retirement accounts, unless an exception applies. The new law would permit participants to withdraw up to $1,000 in a year from their retirement account to pay for an emergency. They must repay the $1,000 distribution within 3 years or no further emergency distributions are permissible during the 3-year repayment period.

  Effective for distributions made after December 31, 2023.

  Applicable plans: 401(a) (except pension plans), 401(k), 403(b), governmental 457(b) plans and traditional IRAs

- Allow additional nonelective contributions to SIMPLE plans - Current law requires employers with SIMPLE plans to make employer contributions to employees of either a nonelective contribution of 2% of compensation, or a matching contribution equal to the

lesser of the employee's elective deferral contribution or 3% of compensation. An employer is now permitted to make additional contributions in a uniform manner, to each eligible employee who has at least $5,000 of compensation from the employer for the year. The contribution may not exceed the lesser of up to 10% of compensation or $5,000 (indexed).

Effective for taxable years beginning after December 31, 2023.

Applicable plans: Simple IRA and Simple 401(k) plans

- Contribution limit for SIMPLE plans - This Act automatically increases the annual deferral limit and the catch-up contribution at age 50 by 10% in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide higher deferral limits, but only if the employer either provides a 4% of pay matching contribution (up from 3%) or a 3% of pay employer nonelective contribution (up from 2%). This provision makes similar changes to the contribution limits for SIMPLE 401(k) plans.

Effective for taxable years beginning after December 31, 2023.

Applicable plans: Simple IRA and Simple 401(k) plans

- Exemption for certain automatic portability transactions - Under current law, an employer is permitted to distribute a participant's account balance without participant consent if the balance is under $5,000 and the balance is immediately distributable (e.g., after a termination of employment). Current law also requires an employer to roll over this distribution into a default IRA if the account balance is at least $1,000 and the participant does not affirmatively elect otherwise.

A retirement plan service provider is now permitted to provide employer plans with automatic portability services. Such services involve the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise.

Effective for transactions occurring on or after the date which is 12 months after the date of enactment of this Act, December 29, 2022.

Applicable plans: 401(a), 401(k), 403(b), and governmental 457(b) plans, SEPs, and SIMPLE plans all with less than 100 employees

- Starter 401(k) and safe harbor 403(b) plans for employers with no retirement plan - Permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). A starter 401(k) plan (or safe harbor 403(b) plan) would generally require that all employees be automatically enrolled in the plan at a 3% to 15% of compensation deferral rate. The limit on annual deferrals would be the same

as the IRA contribution limit, which for 2023 is $6,500 with an additional $1,000 in catch-up contributions beginning at age 50. Plan is not required to perform deferral nondiscrimination testing (ADP testing) and top heavy rules do not apply.

The safe harbor 403(b) rules are similar to the starter 401(k) plan rules, but ADP testing does not apply to 403(b) plans due to the universal availability rules. Top-heavy rules do not apply as well. We see little benefit to a safe harbor 403(b) plan for these reasons.

Effective for plan years beginning after December 31, 2023.

Applicable plans: 401(k) and 403(b) plans

- Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs - Amends the Internal Revenue Code to allow for tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 college savings accounts would be permitted to rollover up to $35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA. These rollovers are also subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years.

Effective with respect to distributions after December 31, 2023.

Applicable plans: 529 accounts and Roth IRAs

- Emergency savings accounts linked to individual account plans - Provides employers the option to offer their non-highly compensated employees pension-linked emergency savings accounts. Employers may automatically opt employees into these accounts at no more than 3% of their salary, and the portion of an account attributable to the employee’s contribution is capped at $2,500 (or lower as set by the employer). Once the cap is reached, the additional contributions can be directed to the employee’s Roth defined contribution plan or stopped until the balance attributable to contributions falls below the cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions with an annual matching cap set at the maximum account balance – e.g., $2,500 or lower as set by the plan sponsor. The first four withdrawals from the account each year may not be subject to any distribution fees or charges. At separation from service, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan or IRA.

Effective for plan years beginning after December 31, 2023.

Applicable plans: 401(k), 403(b), and governmental 457(b) plans

- Updating dollar limit for mandatory distributions - Under current law, employers may automatically roll over former employees’ retirement accounts from a workplace

retirement plan into an IRA if their balances are between $1,000 and $5,000. This limit will now be increased from $5,000 to $7,000.

Effective for distributions made after December 31, 2023.

Applicable plans: 401(a), 401(k), 403(b), and governmental 457(b) plans

- Expansion of the Employee Compliance Resolution System (EPCRS) – The law expands EPCRS to allow more types of errors to be corrected under the self-correction method. There is no time limit to correct unless the self-correction is not completed within a reasonable time period after the failure is identified, or the IRS catches the failure before "any actions which demonstrate a specific commitment to implement a self-correction with respect to such failure." Also, EPCRS is to be updated to apply to inadvertent IRA errors, including exempting certain failures to make required minimum distributions from the otherwise applicable excise tax.

Effective date – the IRS is required to update the EPCRS revenue procedure no later than December 29, 2024. It is unclear whether employers can rely on the law in the meantime.

Applicable plans: 401(a), 401(k), and 403(b) plans

- Application of top-heavy rules to defined contribution plans covering excludable employees – Under current law, if an employer of a top-heavy plan allows employees to participate in a plan earlier than one year of service and age 21, the employer may be required to make a 3% of pay top-heavy contribution for non-key employees. This is an expensive burden for small employers. Secure 2.0 allows an employer to treat employees who have not attained the age of 21 and worked one year of service as a separate group for purposes of top-heavy minimum contributions in a defined contribution plan. Bottom line, employers do not need to make a top-heavy contribution to the plan on behalf of these participants who are allowed to defer early into the plan. This removes the financial incentive to exclude employees from the 401(k) plan and increase retirement plan coverage to more workers.

Effective for plan years beginning after December 31, 2023.

Applicable plans: 401(a) defined contribution plans and 401(k) plans

- Penalty-free withdrawal from retirement plans for individual case of domestic abuse - Allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of $10,000, indexed for inflation, or 50% of the participant's vested account). A distribution made under this provision is not subject to the 10% tax on early distributions. Additionally, a participant has the opportunity to repay the withdrawn money from the retirement plan over 3 years and will be refunded for income taxes on money that is repaid.

Effective for distributions made after December 31, 2023.
Applicable plans: 401(a) defined contribution plans with no qualified joint and survivor annuity distribution options, 401(k) and 403(b) plans; governmental 457(b) plans

- Reform of family attribution rule – The aggregation rules that determine the degree of common ownership in a business have been updated in two situations:
  1. Addresses inequities where spouses with separate businesses reside in a community property state when compared to spouses who reside in separate property states.
  2. Modifies the attribution of stock between parents and minor children.

Effective for plan years beginning after December 31, 2023.
Applicable plans: 401(a), 401(k), and 403(b) plans

- Increased time period to adopt beneficial plan amendments - The Act allows discretionary amendments that increase participants' benefits or nonelective contributions to be adopted by the due date of the employer's tax return, plus extensions, rather than by the end of the plan year in which the amendment is effective. This does not apply to matching contributions and the amendment must be consistent with other typical requirements, e.g., must meet nondiscrimination requirements.

Effective for plan years beginning after December 31, 2023.
Applicable plans: 401(a) and 401(k) plans

- Clarification of substantially equal periodic payment rule - Current law imposes a 10% additional tax on early distributions from tax-preferred retirement accounts, but an exception applies to substantially equal periodic payments that are made over the account owner's life expectancy. This provision provides that the exception continues to apply in the case of a rollover, exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules.

Effective for transfers, rollovers, exchanges after December 31, 2023, and effective for annuity distributions on or after the date of enactment of this Act.
Applicable plans: 401(a), 401(k), 403(b) plans, and traditional IRAs

- Roth plan distribution rules - Under current law, required minimum distributions (RMD) are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions (e.g., RMDs starting at age, 70 ½, 72 or 73) are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan). The pre-death distribution requirement for Roth accounts in employer plans would now be eliminated, similar to a Roth IRA. This will decrease the amount of RMDs for participants with Roth accounts starting in 2024.

Effective for taxable years beginning after December 31, 2023. Please not that this does not apply to distributions which are required with respect to years beginning before January 1, 2024 but are permitted to be paid on or after such date.
Applicable plans: 401(a) defined contribution plans, 401(k), 403(b), and governmental 457(b) plans with a designated Roth feature

- Surviving spouse election to be treated as employee - Allows a surviving spouse of a participant who dies before commencing RMDs to elect to be treated as the employee for RMD purposes; thereby delaying when RMDs must commence.

Effective for calendar years beginning after December 31, 2023.
Applicable plans: 401(a), 401(k), 403(b) and 457(b) governmental plans

- Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a plan year - Allows an employer to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year.

Effective for plan years beginning after December 31, 2023.
Applicable plans: 401(k) plans

- Safe harbor for corrections of employee elective deferral failures - Under current law, employers that adopt a retirement plan with automatic enrollment and automatic escalation features could be subject to significant penalties if any mistake was made even unknowingly. The Internal Revenue Service has issued guidance, Employee Plans Compliance Resolution System (EPCRS), on the correction of failures relating to automatic enrollment of employees into retirement plans. This guidance includes a safe harbor, which expires December 31, 2023, that permits no required employer missed deferral correction, if:
    - a 45-day notice is given to the affected employee,
    - correct deferrals commence within 9 ½ months after the end of the plan year, and
    - the employer provides the employee with any matching contributions that would have been made if the failure had not occurred.

Employers are concerned about the lapse of the safe harbor at the end of 2023. Secure 2.0 made this correction permanent after 2023.
Effective to errors after December 31, 2023. Missed elective deferrals before December 31, 2023 are covered under the existing EPCRS program.
Applicable plans: 401(k), 403(b), and governmental 457(b) plans

- Hardship withdrawal rules - Under current law, the distribution rules for 401(k) and 403(b) plans are treated differently. This provision conforms the 403(b) rules to the

401(k) rules whereby 403(b) plans may now make hardship distributions from the same contribution sources as 401(k) plans, and 403(b) participants are no longer required to take a loan prior to taking hardship distributions.

Effective for plan years beginning after December 31, 2023.
Applicable plan: 403(b) plans

- Catch-up contributions for certain participants must be made on a Roth basis - Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis. This provision provides all catch-up contributions to qualified retirement plans are subject to Roth tax treatment. Employees with compensation of $145,000 or less are exempt from this requirement.

Effective for taxable years beginning after December 31, 2023.
Applicable plans: 401(k), 403(b) or governmental 457(b) plans

Final Thoughts

The SECURE 2.0 Act is one of the most extensive pieces of retirement plan legislation in decades with it impacting virtually all retirement plan types. As a reminder, any plan amendments needed as a result of this new legislation must be adopted by the last day of the first plan year beginning on or after January 1, 2025. (e.g., the deadline for a calendar year plan is December 31, 2025.) This deadline is extended two years for certain governmental and collectively bargained plans.

Rest assured that we are working diligently to change our operations to comply with the mandatory SECURE 2.0 provisions that will be effective within the next 2 years. However, the IRS and the DOL must provide guidance on how to administer most of these provisions. The IRS is heavily tasked with providing guidance not only for the 2023 provisions, but provisions that are effective in 2024 and thereafter. Employers may want to delay implementation of any optional provisions until further guidance is provided.

We will continue to provide more information around the SECURE 2.0 Act in the coming months. In the meantime, your plan administrator is available to help you understand the new SECURE 2.0 provisions and how they may impact your plan.