


EMPLOYEE BENEFIT PLAN

Update 2024

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1 Upcoming Effective Dates Under SECURE 2.0 Retirement Savings Act (SECURE Act 2.0)

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SECURE Act 2.0 was enacted on December 29, 2022. It contains numerous provisions for employer-sponsored retirement plans that are going into effect soon. Each provision has a different effective date. We have summarized key provisions below.

1. MANDATORY COVERAGE FOR LONG-TERM, PART-TIME EMPLOYEES

The employer of the retirement plan must allow long-term part-time employees to participate in their retirement plans. A long-term, part-time employee is defined as an employee who works at least 500 hours a year for two consecutive years. Plans are required to adopt this provision for plan years beginning in 2025 and must take into consideration the hours worked in 2023 and 2024.

The employer must inform the employee that they are eligible to enroll in the plan but is not required to automatically enroll the employee. Additionally, the employer is not required to provide employer contributions if the employee does not work over 1,000 hours. Long-term, part-time employees do not include employees who are under a collective bargaining agreement, nonresident aliens who receive no earned income, or certain students. If the part-time employee does not work over 1,000 hours, they can be also excluded from nondiscrimination testing.

2. CONTRIBUTIONS TO A RETIREMENT PLAN

There were various contribution provisions added, including:

<p style="text-align: center;">CATCHUP CONTRIBUTIONS</p> <p>Effective for the 2024 plan year, if a participant earns \$145,000 or more of FICA wages in the preceding year, catchup contributions can only be made to the participant’s Roth account. If the plan does not allow Roth contributions, catchup contributions cannot be made. Plan sponsors should note that this is a new threshold that may require additional configuration in their payroll software.</p>	<p style="text-align: center;">AUTO-ENROLLMENT</p> <p>Any new retirement plans established after January 1, 2025 must include an auto enrollment feature.</p>
<p style="text-align: center;">MATCHING CONTRIBUTIONS</p> <p>Effective for the 2024 plan year, employers may adopt a provision where an employer can make a matching contribution on student loan payments at the same rate as if the employer was matching employee deferrals.</p>	<p style="text-align: center;">CONTRIBUTION CHARACTERIZATION</p> <p>Effective for the 2023 plan year, participants may elect to characterize employer contributions as Roth contributions.</p>

3. DISTRIBUTIONS FROM A RETIREMENT PLAN

There were various withdrawal provisions added that are effective for the 2024 plan year:

<p style="text-align: center;">TERMINATED PARTICIPANTS</p> <p>Plans may force out terminated participants with a balance of less than \$7,000 (as of 2023 the limit is \$5,000).</p>	<p style="text-align: center;">EMERGENCIES</p> <p>A participant may withdraw up to \$1,000 for an emergency, as defined by SECURE Act 2.0.</p>	<p style="text-align: center;">DISASTER RELIEF</p> <p>A participant may withdraw up to \$22,000 for disaster relief if the participant lives in a federal disaster area, has suffered an economic loss due to the disaster, and the withdrawal is made within 180 days of the disaster.</p>
<p style="text-align: center;">DOMESTIC ABUSE</p> <p>Within one year of an incident of domestic abuse, a participant may withdraw the lesser of \$10,000 or 50% of their vested balance.</p>	<p style="text-align: center;">TERMINAL ILLNESS</p> <p>A participant may withdraw their vested balance if the participant has a terminal illness. A doctor must certify that the participant has a terminal illness and has 84 months or fewer to live.</p>	

TAKEAWAY

We recommend that Plan sponsors work with their attorneys and third party administrators to ensure all required provisions are adopted and to consider which optional provisions make sense for their plan.

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IRS Corrections Programs for Plan Errors

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The American Institute of Certified Public Accountants (AICPA) recently gave a presentation entitled, “To Correct, or Not to Correct, That is Not Actually a Question.” The focus of the presentation was to discuss corrective actions for common issues that retirement plans encounter during their lifecycle. Retirement plans continue to have more and more complexities, which creates a lot of room for error. Acknowledging this, the Internal Revenue Service (IRS) and Department of Labor (DOL) have both established correction programs for plan sponsors to correct errors that are within the purview of either the IRS or the DOL. The title of the presentation gives insight into the position that each of these bodies has taken on the matter. If a plan error is discovered, regardless of significance, it is expected that plan sponsors will correct.

The IRS is concerned with operational failures, whereby a plan does something that is not in line with the plan document, which the IRS has deemed tax-exempt. Operational failures can jeopardize that tax-exempt status. The IRS is also responsible for employer eligibility failures (IE – a company sponsors a plan that it is not permitted to have) and demographic failures through non-discrimination testing. The IRS has established three correction programs, the use of which varies based on the discovery of the error and the magnitude. They are as follows:

1. **Self-Correction Program (SCP)**

This program is for insignificant errors which are caught and corrected in a timely manner (end of the third year following the year of failure, at the latest). Nothing is reported to the IRS, but the plan sponsor must have an established process to document conclusions reached with regard to the method and calculation of any correction, as it is later subject to audit.

2. **Voluntary Correction Program (VCP)**

This program is similar to the SCP. However, it is typically used for more significant errors. The plan sponsor is required to document procedures in the same fashion as the SCP, but file it via a submission to the IRS. The IRS issues a compliance statement upon review, which provides protection from audit.

3. **Audit Closing Agreement Program (Audit CAP)**

This is used for operational errors that are discovered through an IRS examination. Correction methods and procedures are the same as the SCP and VCP. Due to the fact that errors were discovered by the IRS, the plan sponsor pays a sanction and enters into an agreement with the IRS in order to close the matter. Plan sponsors are encouraged to self-correct or to use the VCP prior to an IRS examination in order to avoid Audit CAP corrections.

The AICPA identified some common areas where the industry has noted plan document failures in recent years:

COMPENSATION ERRORS	DEFERRAL ELECTION ERRORS	INCORRECT CALCULATIONS
Definition of compensation errors, particularly as it relates to off-cycle/manual checks and unique payroll elements.	Deferral election errors, particularly when there are multiple ways that a participant can elect to change their election, resulting in a mismatch between the election per the recordkeeper and the withholdings in payroll.	Incorrect calculation of employer contributions, both on individual pay periods and annual calculations.

Further information on the above corrections and links to fix-it guides for specific corrections are available on the IRS website. When an error is discovered, it is encouraged that plan sponsors check the website for guidance.

The DOL is concerned with prohibited transactions and Form 5500 filings. The DOL has a correction program for each of these. The Voluntary Fiduciary Correction Program (VFCP) encourages self-correction of prohibited transactions with non-exempt parties. An application is filled out and filed with the DOL. There is no fee for filing. If approved, the DOL agrees to not investigate the breach of fiduciary responsibility that resulted in the VFCP filing. Common prohibited transactions include late contributions of employee contributions and improper payment of expenses by the plan. The Delinquent Filer Voluntary Compliance Program (DFVCP) is utilized for late 5500 filings. A late 5500 filing risks substantial penalties from both the IRS and DOL. Plans that are late are encouraged to file as soon as possible through the DFVCP, which is simple, easy to use and has a de minimis fee in comparison to the penalties.

TAKEAWAY

The authoritative bodies are clear that plan sponsors are required to correct any and all errors discovered while operating their plans.

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Audit Quality Study Results & Implications

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A recent Department of Labor study reinforces that the choice of auditor for your benefit plan is an important fiduciary responsibility and should not be taken lightly. The audit can go beyond affirming your plan compliance — it can also help your organization identify operational issues to correct.

In 2023, the Office of the Chief Accountant (OCA) of the Employee Benefits Security Administration of the Department of Labor (DOL) completed its latest Audit Quality Study. This was the fifth Audit Quality Study performed by the DOL, and the first since 2015. The OCA selected 307 plan audits covering the 2020 plan year and reviewed the auditors' workpapers. The OCA evaluated these workpapers against the American Institute of Certified Public Accountants' Audit and Accounting Guide, Audits of Employee Benefit Plans.

Different from the 2015 study, the 2023 study utilized “plan” as the sampling unit, rather than “accounting firm.” Below are some highlights from the study:

- In its executive summary of the study, the OCA notes, “We also found that there continues to be a clear link between the number of employee benefit audits a CPA performed and the quality of the audit work.” The below table was included as an exhibit to the study.

Strata	Form Year 2020	
	Audits Reviewed	Audits with Deficiencies
1-2 Plans	20	70.0%
3-5 Plans	23	51.2%
6-24 Plans	54	50.1%
25-99 Plans	74	38.0%
100+ Plans	137	17.0%
Total	308	30%

- Overall, 30% of audits showed a deficiency. This is a decrease from the 2015 study, which had an aggregate deficiency rate of 39%.
- The number of CPA firms performing audits continues to decrease.
- Audits performed by Employee Benefit Plan Audit Quality Center members had a lower deficiency rate.
- In its report, the OCA highlighted the audit areas where their findings were most common – participant data, contributions, benefit payments and internal controls.
- More specifically, the appendices to the report highlighted more detailed testing areas where auditors failed to meet the standards:
 - Recalculation of eligible compensation
 - Eligibility to receive a benefit payment
 - Testing of account allocations
 - Calculating and reporting delinquent contributions
 - Insufficient documentation of control environment
 - Evaluation of specialists
 - Inappropriate reliance on or evaluation of SOC reports

TAKEAWAY

Early in its report, the OCA summarizes the study very well, stating “While the trend in audit quality has improved, too many employee benefit plan audits are deficient.” The study stresses the importance of selecting a good and qualified auditor. It is the best result for plan participants, but also the best result from a compliance perspective.

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