ROBERTS & HOLLAND LLP

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BENEFITS & COMPENSATION UPDATE

Retirement Plan Amendments Due by December 31, 2026

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By December 31, 2026, the plan documents for most retirement plans, including individually designed and pre-approved plans, must be amended to reflect applicable changes under the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act"), the SECURE 2.0 Act of 2022 (the "SECURE 2.0 Act"), and the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act" and collectively with the SECURE Act and SECURE 2.0 Act, the "Acts"). While the documentary amendments are not due until the end of this year, these changes should already be in effect operationally to comply with certain effective dates. For certain types of plans including government plans, collectively bargained plans where the CBA was ratified prior to December 29, 2022, and individual retirement accounts ("IRAs"), the IRS has extended the compliance deadline to later dates, which can be found in IRS Notice 2025-60.

The following is a non-exhaustive list of the key provisions of the SECURE Act, SECURE 2.0 Act, and CARES Act that generally require amendments to most retirement plan documents. Note that a plan document is not required to be amended with respect to any optional changes under the Acts that the plan declines to adopt.

Distributions

Increase in Required Minimum Distribution ("RMD") Age

Prior to the SECURE Act, participants were required to begin taking distributions from their retirement plans at age 70 ½. Effective for distributions made after December 31, 2019 for participants who attain age 70 ½ after such date, RMDs were required to begin no later than age 72 pursuant to the SECURE Act. However, effective January 1, 2023, the SECURE 2.0 Act further increased the age when participants are generally required to begin receiving RMDs from their retirement plan to age 73. Starting on January 1, 2033, the age for beginning RMDs will increase to 75.

Note that the updated RMD age under the SECURE 2.0 Act has no effect on participants who turned 72 in 2022 or earlier. For such participants, RMDs will continue as originally scheduled. While the IRS has indicated that plans may continue to be designed and operated to require participants to receive distributions earlier than the statutory RMD age (for example, requiring distributions at age 65 or 70-1/2), we understand that the IRS is still requiring that such plan documents be amended to account for the RMD age changes under both the SECURE Act and SECURE 2.0 Act.

Increase in Cash-Out Limits

The SECURE 2.0 Act provides that a terminated participant's vested account balance can be distributed without his or her consent if the value is less than $7,000, effective for distributions made after December 31, 2023. This is an increase from the previous cash-out limit of $5,000. The requirement of an automatic rollover IRA as the default distribution method for mandatory cashouts

continues to apply to any involuntary distribution of $1,000 or more absent a participant's consent.

Modified RMD Rules upon Death of Participant

The SECURE Act modified the rules relating to distribution timing for defined contribution plans and IRAs. If a participant dies before the distribution of his or her benefit, the entire benefit must be distributed to the participant's designated beneficiary within 10 years after the death of the participant.

However, if provided and permitted by the plan, "Eligible Designated Beneficiaries" (defined below) can elect within one calendar year of the participant's death to receive distributions over their lifetime. "Eligible Designated Beneficiaries" include (i) a surviving spouse, (ii) disabled and chronically ill individuals, (iii) individuals who are not more than 10 years younger than the participant, and (iv) children of the participant who are younger than 21. Note that if the Eligible Designated Beneficiary is the child of the deceased participant, the life expectancy method of distribution is no longer available when the child turns 21, and the distribution option is required to switch to the 10-year payout schedule with all remaining assets required to be distributed by the end of the 10th year after the child turns 21.

No Lifetime RMDs for Roth 401(k) Accounts

Prior to the SECURE 2.0 Act, a participant with a Roth-designated account in a 401(k) plan was required to receive pre-death distributions from such account in accordance with RMD rules. The SECURE 2.0 Act now eliminates the pre-death minimum distribution requirement for Roth 401(k) accounts during the participant's lifetime (this rule does not apply to beneficiaries).

Contributions

After-Tax Catch-Up Contributions for Certain Participants

Prior to the SECURE 2.0 Act, a participant eligible to make catch-up contributions to a 401(k) plan could do so on either a pre-tax or after-tax Roth basis (if the plan offered a Roth option). Effective as of January 1, 2026, the SECURE 2.0 Act provides that a participant is required to make catch-up contributions on an after-tax Roth basis if the participant's FICA wages for the prior year from the employer who sponsors the plan exceeds $150,000 (as adjusted for inflation).

This rule applies to all plans that offer catch-up contributions. Plans that do not offer Roth-designated accounts will need to accommodate this rule by allowing for Roth contributions (including for the general population of employees, not just those who are subject to the Roth catch-up requirement) or eliminating catch-up contributions entirely.

Enhanced Catch-Up Contributions for Participants Ages 60-63

Prior to the SECURE 2.0 Act, a 401(k) plan participant who has attained age 50 can make an $8,000 catch-up contribution in excess of the otherwise applicable contribution limit. This limit is indexed for inflation. For the year in which a participant turns 60, the SECURE 2.0 Act increases the maximum catch-up contribution limit to the greater of (i) $10,000 or (ii) 150% of the original $8,000 limit (as adjusted). Participants are eligible to make annual catch-up contributions at this enhanced level until the year in which they turn 64.

Operational

Penalty Free Withdrawals

Under the SECURE 2.0 Act, participants are allowed to receive one penalty-free "emergency personal expense distribution" of up to $1,000 per calendar year "for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses." The Act further provides that certain cases of terminal illness and domestic abuse are also eligible for a penalty-free early withdrawal.

Qualified Birth and Adoption Withdrawals

Starting on January 1, 2020, the SECURE Act allows parents to take early withdrawals of up to $5,000

from their retirement accounts without penalty within a year of a child's birth or adoption. The limit applies to all plans in which the parent participates, including IRAs, and is determined on an individual basis, so each parent may receive up to $5,000 even if both individuals work for the same employer.

Long-Term Part-Time Employees

For plan years beginning in 2024, under the SECURE Act, employers are required to permit part-time employees, ages 21 and over, who perform at least 500 hours of service over three consecutive years to contribute to the employer's 401(k) plan. Beginning in 2025, the SECURE 2.0 Act limited the consecutive year requirement to two years instead of three. Note that employers are not required to make employer contributions for such part-time employees, although they are permitted to do so. Notwithstanding the foregoing, exclusions of long-term part-time employees from plan participation are permissible if such employees are part of a recognized and non-discriminatory excluded class under the plan.

Automatic Enrollment and Automatic Escalation for New Plans

401(k) plans are permitted to automatically enroll participants at a default contribution rate absent an affirmative election by the participant to the contrary. Plans can also automatically escalate the default contribution rate following the participant's first year of participation. Under the SECURE 2.0 Act, 401(k) plans established after December 29, 2022 are required to include these automatic-enrollment and automatic-escalation features. In addition, the SECURE 2.0 Act provides that the automatic-enrollment and automatic-escalation features are also required with respect to employers that have adopted an existing multiple employer plan after December 29, 2022, subject to limited exceptions for certain small employers and new businesses.

Such plans must adopt an initial default contribution rate between 3% and 10% for all automatically enrolled participants. Additionally, automatically enrolled participants' default contribution rate must be increased by 1% per subsequent year of participation up to a fixed maximum rate between 10% and 15% of compensation (as set by the plan sponsor). Participants will have the option to opt out of auto-enrollment and auto-escalation.

Plans that were adopted prior to December 29, 2022 are not required to implement the automatic-enrollment and automatic-escalation provisions.

Increased Flexibility for Plan Fiduciaries Regarding Overpayments

Prior to the SECURE 2.0 Act, fiduciaries were generally required to take reasonable steps to recover excess payments mistakenly made to participants to avoid potentially jeopardizing the plan's tax-qualified status. The SECURE 2.0 Act grants fiduciaries the flexibility to not recover benefit overpayments and further clarifies that the failure to recover such overpayments will not jeopardize the plan's tax-qualified status or violate ERISA.

However, if fiduciaries decide to recover overpayments, the SECURE 2.0 Act imposes certain limitations on the employer in the recovery process. Such limitations include, but are not limited to, prohibitions on (i) recovery if the first overpayment occurs more than three years before the participant is notified of such overpayment, (ii) recovery of overpayments from a surviving or former spouse or other beneficiary, and (iii) collecting interest on the principal amount of the overpayment.

CARES Act

Distributions

Under the CARES Act, qualified individuals affected by COVID-19 could receive a distribution from their retirement plan of up to $100,000 between January 1 and December 30, 2020 without paying the usual 10% early withdrawal penalty.

Loans

The CARES Act further provided that qualified individuals who were eligible to take coronavirus-related distributions could also borrow as much as

$100,000 from their retirement plan, if permitted by the respective plan.

Under the CARES Act, plan administrators could also suspend, for up to one year, plan loan repayments due on or after March 27, 2020, and before January 1, 2021.

RMD Waiver

The CARES Act waived RMDs from 401(k) plans and IRAs for the entire 2020 calendar year. However, participants who wished to take a distribution could still do so, as the waiver only removed the requirement to distribute, not the participant's ability to access funds. The waiver also covered 2019 RMDs that were due by April 1, 2020 for participant who just reached their required beginning date.

Note that this waiver did not apply to defined benefit plans.

Next Steps

The SECURE Act, SECURE 2.0 Act, and CARES Act have implemented both optional and mandatory changes to the retirement plan landscape. You should first confirm operational compliance with the mandatory changes and any optional changes currently in effect under your respective plan. In addition, we suggest you contact advisors and plan document providers to ensure that the amendments are prepared later this year for required execution by year-end. This year-end deadline for these amendments applies regardless of whether the plan is a calendar-year plan or not.

Notwithstanding the foregoing, please note that the IRS recently released statements indicating the issuance of upcoming regulations and guidance that could potentially extend the amendment deadline for certain required provisions under the Acts. However, all discretionary amendments under the Acts are still required to be implemented by year-end, subject to any further statements from the IRS.

This update is not intended to provide legal advice with respect to any particular situation, and no legal or business decision should be based solely on its content.

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