

Employee Benefit Plans Alert

How Does the SECURE 2.0 Act Affect Your Retirement Plan?

By Louis F. LiBrandi, Principal and Anthony Bianchi, Tax Supervisor

President Biden signed into law The Consolidated Appropriations Act, 2023 (the Act) in December 2022. The Act includes the SECURE 2.0 Act of 2022 (SECURE 2.0) which includes provisions that will directly impact 403(b) plans. Sponsors of such plans should be aware of the changes that will take place.

A prior [Employee Benefit Plans Alert](#) provided an overview of the many changes made by SECURE 2.0 affecting retirement plans. This Alert is intended to identify specific changes applicable to 403(b) plans. Future Alerts will also provide specific information as to the type of plan or provision that warrants additional information to evaluate.

403(b) plans have traditionally been subject to distinct rules set apart from other defined contribution plans (e.g., 401(k) plans), including the universal availability rule, special catch-up contribution limits, and special rules for Section 415 calculations. However, the trend in recent years has been to make 403(b) plans subject to many of the same rules that affect 401(k) plans.

SECURE 2.0 Changes to 403(b) Plans

Among the changes implemented by SECURE 2.0:

- Effective in 2023, SECURE 2.0 permits 403(b) plans to participate in multiple employer plans (MEPs) or pooled employer plans (PEPs). These are plans in which unrelated employers, who may or may not share a common business bond, may jointly participate. These plans give employers the opportunity to offload administrative responsibilities and also allow them to take advantage of economies of scale that such arrangements enjoy.
- New 403(b) plans will be subject to mandatory auto-enrollment and auto-escalation requirements effective for plan years beginning after December 31, 2024. The initial auto-enrollment amount must be at least 3% (but not more than 10%). In subsequent years, that amount is increased by 1% until it reaches 10% (but not more than 15%).
- Hardship withdrawals. Beginning in 2024, earnings on employee contributions and for 403(b) custodial accounts, amounts attributable to employer contributions will be eligible sources from which participants can withdraw funds for the purpose of hardship withdrawals. (Prior to SECURE 2.0, plans were prohibited from using these sources for hardship withdrawals.) In addition, plan sponsors will now have the ability to rely on participant certifications in making hardship distributions.
- SECURE 2.0 also provides for 403(b) plans to expand their investment options by permitting plan participants to invest in common collective trusts (CCTs). These investment vehicles have become increasingly popular in 401(k) plans since fees are typically lower. However, the final language in SECURE 2.0 does not provide a fix for a securities law issue that could subject CCTs to registration requirements if 403(b) plans were permitted to invest in them. Because of this glitch, sponsors of 403(b) plans may wish to hold off on offering CCTs as an investment option pending further congressional or agency clarity on this issue.

The following SECURE 2.0 provisions will apply not only to 403(b) plans but generally to all retirement plans:

- Effective for plan years beginning after December 31, 2024, part-time employees who perform 500 hours of service for two consecutive years must be treated as eligible to participate in their employer's retirement plan.
- As of January 1, 2023, the age for Required Minimum Distributions (RMDs) is increased from 72 to 73. The age will be further raised to 74 beginning January 1, 2032. Starting January 1, 2024, retirement plans will be permitted an RMD exception for Roth accounts. Also effective January 1, 2024, surviving spouses of deceased participants must be permitted to elect to be treated as the participant for RMD purposes (assuming the RMD distributions have not already commenced). This will allow for a delay in the required beginning date for RMDs being distributed to the surviving spouse.

Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist employers with all aspects of employee benefit plan compliance. For more information, please contact your client services partner or either of the following:

Timothy J. Desmond, CPA
Partner-in-Charge
Employee Benefit Services
tdesmond@pkfod.com | 551.249.1728

Louis F. LiBrandi, EA, CEBS, ChFC, TGPC
Principal
Employee Benefit Services Group
lilibrandi@pkfod.com | 646.449.6327

Anthony Bianchi, CEBS
Employee Benefit Services Group
abianchi@pkfod.com | 646.449.6385

Our Firm provides the information in this e-newsletter for general guidance only and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.