Secure 2.0 Highlights

Presented by

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Overview

Changes affecting 401(k) plan operations

- Changes become effective in different years
- Plan design decisions
- Mandatory changes

Plan correction and compliance changes

Plan amendments not required until December 31, 2025

Effective in 2023

Effective in 2023

401(k) Plan Design Decisions

Roth matching and/or nonelective contributions

- Can permit participants to elect that employer matching and/or nonelective contributions be made on Roth basis
- Contributions subject to election must be fully vested

Small financial incentives for plan contributions

- Must be de minimis, and must not be paid with plan assets

Hardship self-certification

- Can now self-certify as to existence of hardship event, in addition to certifying that amount requested does not exceed financial need

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Effective in 2023

401(k) Plan Design Decisions

Qualified disaster recovery distributions

- Principal place of abode in FEMA disaster area for disasters on or after January 26, 2021
- Withdrawals up to $22,000 per disaster; can repay within 3 years
- Loans up to $100,000 or 100% of vested account balance; 180-day suspension of loan repayments

Distributions to terminally ill participants

- Participant expected to die within 84 months (7 years)
- Distribution can be repaid within 3 years

QLACs – Qualified Longevity Annuity Contracts

- Removal of certain limits

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Effective in 2023

401(k) Plan Mandatory Changes

Age for required minimum distributions (RMDs)

- Increased from 72 to 73 in 2023
- Further increase to 75 in 2033

Repayment of qualified birth or adoption distributions (QBOADs)

- Repayment must be within 3 years
- Transition rule for QBOADs made before enactment – repay by December 31, 2025

Effective in
2024

Effective in 2024

401(k) Plan Design Decisions

Mandatory cash-out limit increased from $5,000 to $7,000

Matching contributions for student loan repayments

- Loan payments that can be matched capped at 402(g) limit (or participant's total compensation for year, if less) minus actual elective deferrals for year
- Participant can self-certify loan payments on annual basis; may have 3 months or more after end of plan year to do so
- Loan payments can be treated as elective deferrals for purposes of safe harbor matching requirements
- Can apply ADP test separately to participants receiving loan matching contributions

Effective in 2024

401(k) Plan Design Decisions

Emergency Savings Accounts – for NHCEs only

- Participants contribute on Roth basis; employer can auto-enroll participants for up to 3% of compensation
- No contributions after account balance reaches $2,500 (indexed) or lower limit set by plan sponsor
- Must allow withdrawals at least once per month

Distributions to participants who are domestic abuse victims

- Up to lesser of $10,000 (indexed) or 50% of vested account balance; can repay within 3 years
- Self-certify

Distributions for emergency personal or family expenses

- Up to $1,000 in any one calendar year; can repay within 3 years
- Self-certify

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Effective in 2024

401(k) Plan Mandatory Changes

Roth catch-up contributions

- If plan permits catch-up contributions for participants age 50 or older, participants whose compensation equals or exceeds $145,000 (indexed) can make catch-up contributions on Roth basis only
- If any participant is subject to Roth catch-up requirement, other participants must be allowed to make Roth catch-up contributions

RMDs (pre-death) – no longer required from Roth accounts

RMDs – spouse can elect to be treated same as deceased participant

Effective in 2025

Effective in 2025

401(k) Plan Design Decisions

Increase in catch-up contribution limit

- Only for participants who are ages 60-63 as of end of plan year
- Increase from $7,500 to greater of $10,000 or 150% of 2024 regular catch-up contribution limit for other participants; both amounts indexed after 2025
- When reach age 64, go back to regular catch-up contribution limit

Effective in 2025

401(k) Plan Mandatory Changes

Long-term part-time employees

- Currently, must allow participation at least for employee contributions after employee works at least 500 hours in 3 consecutive years
- SECURE 2.0 reduces 3 years to 2 years, counting service beginning in 2023 plan year

Mandatory auto-enrollment

- Plans established after December 29, 2022
- Initial contribution 3%-10% of compensation; auto-escalation 1% per year
- 30- to 90-day withdrawal right

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Plan Correction & Compliance Changes

Correction of "inadvertent benefit overpayments"

Amendments to ERISA and Code– effective now

Fiduciaries can decide <u>not</u> to recover overpayment

- Unrecovered overpayment can continue to be treated as eligible rollover distribution

Recovery of overpayments now subject to certain limits

- No interest charges or collection agencies
- 3-year window for recovery
- Exceptions to limits where participant is culpable

EPCRS Expansion

IRS required to update by December 29, 2024

Self-correction of "eligible inadvertent errors"

Self-correction for more plan loan failures; DOL must treat as eligible under VFCP

Safe harbor correction for elective deferral failures resulting from auto-enrollment or auto-increase features

- Can correct within 9 ½ months after plan year-end
- Must correct sooner if employee notifies plan sponsor of error

Reductions in RMD Penalties

Reduction in RMD penalty from 50% to 25% - effective now

- Can be 10% if correct within 2 years

Reduction in RMD penalty statute of limitations period - effective now

- Current period can be indefinite– 3 years from date Form 5329 filed reporting RMD failure– if Form 5329 ever filed
- New period is 3 years from date income tax return filed for year that RMD failure occurred

Deadlines

Extended deadline for plan amendments increasing benefits

- Employer's tax return due date (including extensions) for year in which amendment takes effect

SECURE 2.0 amendments not required until December 31, 2025

- 2027 for governmental and collectively bargained plans

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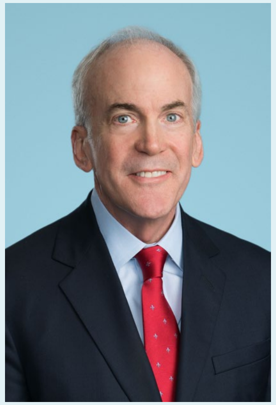
Your Presenters



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Peter Hunt, a New York-based Pillsbury partner, is recognized by *The Legal 500 U.S.* as a leader in employee benefits and executive compensation law. Peter has extensive experience advising employers, financial institutions and investment funds on fiduciary and compliance issues under ERISA, the Internal Revenue Code and securities laws, and he regularly counsels on employee benefits and compensation aspects of corporate acquisitions and dispositions. He designs stock option and equity-based compensation plans; drafts employer pension, profit-sharing and executive compensation plans and trust agreements; obtains IRS determination letters and rulings; and seeks Department of Labor exemptions and opinions.

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Christine Richardson focuses her practice on employee benefits and executive compensation, with an emphasis on mergers and acquisitions, governmental audits, and benefit program compliance and strategic initiatives. Christine advises on all aspects of employee benefits, including drafting, designing and implementing benefit programs, as well as handling operational, compliance and strategic planning considerations related to tax-qualified plans, such as 401(k) plans; non-qualified deferred compensation programs; health and welfare benefit plans, such as wellness programs, reimbursement accounts (FSAs, HSAs and HRAs), severance programs and cafeteria plans; fringe benefit plans; and advice related to the Internal Revenue Code, ERISA, Affordable Care Act, WARN Act, HIPAA and COBRA compliance issues. Christine has extensive experience advising plan fiduciaries on their obligations, including establishing governance procedures, training, mitigating risks, participating in fiduciary committee meetings and DOL audits. Christine also frequently negotiates contractual arrangements to effectuate and administer benefits arrangements with outside vendors.