SECURE 2.0 Act of 2022
WEBCAST Q&A

ON AUGUST 31, 2023, ADP RETIREMENT SERVICES HELD A WEBCAST ON THE SECURE 2.0 ACT. There wasn't enough time to answer all the questions submitted during the webcast. We created this Q&A to provide answers to the remaining attendee questions. We hope you find this information helpful.

ROTH CATCH-UP CONTRIBUTIONS
January 1, 2026
Required Provision (if the plan offers catch-up)

Is it the employer's responsibility to determine a new employee's prior year wages if they were not employed all year by the current employer?

No, employers are only required to determine whether their employees were paid over $145,000 in the prior year. New hires will be able to make pre-tax catch-up contributions even if the new employees were paid over $145,000 by a different employer in the prior year.

Can employees making over $145,000 no longer make catch up contributions on a pre-tax basis?

Under an IRS transitional rule, beginning in 2026, employees making over $145,000 in the previous year with the same employer, will only be able to make catch-up contributions to a Roth (after-tax) account.

If someone has two W-2s and both are below $145,000 individually but when added together are over $145,000, will the catch-up contribution have to be made as Roth?

If an employee has W-2s from different employers that total more than $145,000 but are separately under $145,000, they are not subject to the Roth mandate because it only applies to employees with the same employer in the prior plan year.

For plans with ADP payroll, will employees earning over $145,000 be automatically identified?

For employers with ADP payroll and an ADP retirement plan, ADP will automatically flag employees subject to mandatory Roth catch-up contributions, however there may be certain circumstances requiring client intervention. More details will be provided in 2025.

For employers using ADP payroll that have a different retirement plan provider, ADP has already begun to prepare our systems for when this change will take effect. We continue to await further guidance from the IRS during the administrative transition period and will prepare our systems to support this provision as design requirements are clarified.

Is the $145,000 threshold for catch-up contributions as Roth referring to gross wages?

The $145,000 threshold amount refers to FICA wages, which are IRC Sec. 3121(a) wages.

Does the Roth catch-up apply to new hires since employers do not have their wages from previous companies?

No, employees working for new employers are not subject to the Roth catch-up mandate, unless they were paid over $145,000 in the prior year by their current employer.

Does the Roth catch-up requirement for high wage earners apply to SIMPLE Plans?

No. This provision applies to 401(k), 403(b) and governmental 457(b) plans but not to SIMPLE or SEP IRAs.

Is the $145,000 threshold for the Roth catch-up contributions indexed for inflation or is that the permanent threshold?

The $145,000 threshold for the Roth catch-up contributions will be indexed for inflation. Employers will need to monitor these threshold changes.

What happens if an employee hits the $145,000 in the middle of the year?

If an employee earns $145,000 by mid-year, they would be subject to Roth catch-up contributions in the following year if they work for the same employer.

Does the catch-up contribution also apply to owners of the business?

It is anticipated that the IRS will issue guidance that workers who are not paid FICA wages, such as sole proprietors, partners and self-employed persons, are not subject to the Roth requirement, because the $145,000 threshold is based on FICA wages.

LONG TERM, PART-TIME (LTPT) EMPLOYEES
Originally effective under SECURE 1.0 Act for plan years beginning after December 31, 2020, revised by SECURE 2.0 Act generally effective for plan years beginning after December 31, 2024.
Required Provision

Is the LTPT 500 hour requirement an annual requirement or is it the total over a 2 year period?

For plan years beginning on and after January 1, 2021, if your employee completes a minimum of 500 hours of service (but not more than 1000 hours of service) in each of three consecutive years, the employee meets the LTPT eligibility requirements. For plan years beginning on and after January 1, 2025, if your employee completes a minimum of 500 hours of service (but not more than 1000 hours of service) for two consecutive years, the employee will meet the LTPT eligibility requirements.

If a LTPT employee completes 500 hours in the first year but only 400 in the second, what happens?

If a LTPT only completes one year of service under the two year eligibility schedule, or completes two years of 500 hours under the three year eligibility schedule, the LTPT's eligibility period is reset, and the employee's LTPT eligibility is re-determined based on hours of service and years of service beginning with the first year that the employee completes 500 or more hours of service.

Does the LTPT employee rules apply for employees only? Does it apply to interns or contractors?

The LTPT rules apply to employees whose basis for plan exclusion is solely hours' based. Generally (and as provided by the ADP Prototype Plan), temporary and seasonal exclusions are considered hours based. Employers must determine whether an intern status is more than a "disguised" hours requirement. You must still track hours of service only for employees of the plan sponsor.

To ease the administrative burden, would you recommend changing our eligibility requirement from 1000 hours and 1 year of service to 500 hours and 1 year of service?

Reducing the hours of service required for eligibility would eliminate the need to track hours over a period of years, however, the decision to change eligibility is more complicated than just meeting the LTPT requirements. We recommend you discuss changes to your plan's eligibility provisions with your legal counsel and retirement plan administrator.

Will there be any ADP system enhancements or new fields to make it easier to monitor part-time hours and length of service?

Before the end of 2023, ADP payroll and retirement plan clients will receive information regarding identification of long-term, part-time (LTPT) employees.

How can I exclude part-time employees from match and profit sharing contributions?

Your Plan provisions can provide that LTPT employees are not eligible for matching or nonelective contributions.

What if the long term employee terminates employment and then is re-hired? Are we required to enroll them?

More guidance is expected, however, generally a rehired employee's prior required service would be counted for eligibility upon rehire. Check your plan's specific provisions regarding eligibility and enrollment requirements for rehired employees.

Does the LTPT provision apply to the CalSavers program?

CalSavers is a California state run Roth IRA program and is not subject to SECURE 2.0's LTPT provisions, which are part of the federal laws.

Are matching or non-elective contributions required for part-time employees?

No, employers are not required to provide matching or non-elective contributions for employees who become eligible to participate in the 401(k) plan under the LTPT rule.

Does the LTPT provision apply to plans that already allow part-time employees to contribute to the 401(k)?

No, it does not apply to plans that currently allow employees, regardless of how many hours they work, to contribute to the retirement plan.

Is there an age requirement associated with the LTPT provision?

Yes, under SECURE 2.0, employees must be allowed to make elective deferrals after completion of two consecutive 12-month periods (three consecutive 12-month periods for SECURE 1.0) in which they have worked at least 500 hours and attain age 21.

Does LTPT eligibility apply to 403(b) plans?

The LTPT provisions were not a part of the original SECURE Act rules, however, SECURE 2.0 does apply to ERISA 403(b) plans. For plan years beginning on or after January 1, 2025, both student employees and employees who normally work less than 20 hours per week will be eligible under their employer's 403(b) plan after two consecutive years of 500 hours or more of service.

AUTOMATIC ENROLLMENT
January 1, 2025
Required Provision

When does the automatic enrollment provision take affect?

Most employers who establish new plans after December 29, 2022 will be required to automatically enroll all eligible employees into their plan (unless they opt out) beginning in 2025. Note that the automatic enrollment mandate does not apply to certain employers/plans, including employers with 10 or fewer employees, governmental plans and plans of new employers who have been in existence for fewer than three years.

Are employees allowed to opt out of automatic enrollment? If so by when?

Once notified that they will be automatically enrolled in their employer's 401k plan, employees are given a certain amount of time under their plan's provisions to opt out of participating in the plan. If they do not affirmatively opt out of the plan, they will be automatically enrolled in the plan in accordance with the plan's provisions. Further, plans subject to the automatic enrollment mandate will be required to allow employees to withdraw any deferrals and any earnings thereon made pursuant to the automatic enrollment provisions within 90 days of the first automatic contribution without being subject to a 10% early withdrawal penalty.

If an employee withdraws their contributions within 90 days, does the employer match get withdrawn? How would this be handled by the plan?

Yes, for employees that opt to withdraw automatic enrollment contributions, any matching employer contributions will be forfeited and treated the same as other forfeitures under the plan terms.

Do we receive a tax credit if we already have automatic enrollment set up?

The $500 automatic enrollment tax credit applies to eligible employers beginning in the first year that the employer adopts an eligible automatic enrollment arrangement in their 401(k) plan and continues for a period of three tax years. Therefore, you may be eligible for the tax credit depending upon the year when you adopted the automatic enrollment provision.

Our plan has a 6% automatic enrollment. Are we required to implement automatic escalations of 1% every year up to 10%?

If your plan was established prior to December 29, 2022 it is exempt from the SECURE 2.0 Act automatic enrollment and automatic escalation provisions. Note that the automatic enrollment mandate does not apply to certain plans, including those with fewer than 10 employees, governmental plans and plans of new employers who have been in existence for fewer than three years.

In addition to auto enrollment, is auto escalation also required?

Yes. If the plan was established on or after December 29, 2022, then beginning in 2025, the legislation generally requires an annual auto-escalation of 1% until at least 10% but no more than 15% is reached.

If an existing plan transfers to another provider after 2025, will that be treated as a new plan?

No, if the plan was established prior to December 29, 2022, the plan will not be treated as a new plan for purposes of the automatic enrollment provisions.

If the employee wants their automatically enrolled contributions refunded, what do we do about gains or losses on this money?

If an employee elects to have their automatic contributions returned, the amount of the distribution will include any earnings, or losses, so that the amount returned may be more or less than the amount contributed.

Would the annual automatic increase be the first of every year or each year annually from the effective date of the automatic enrollment for each employee?

The legislation requires an annual auto-escalation for each plan year starting after each completed year of participant of 1% until at least 10% but no more than 15% is reached. Note, ADP's auto-escalation program may provide for accelerated increases.

CATCH-UP CONTRIBUTION LIMIT
January 1, 2025
Optional Provision (if the plan offers catch-up)

How did the catch-up contribution limit change with SECURE 2.0 and when does it take affect?

To help fast-track retirement savings for workers nearing retirement, SECURE 2.0 raises the catch-up limit for older employees.

Starting in 2025, participants ages 60 through 63 can make an additional catch up contribution of up to the greater of $10,000 per year or 150% of the 2024 catch-up limit, as indexed. Before and after those ages the additional catch up contribution is not available.

What is the catch-up amount for employees younger than 60 and older than 63?

Participants younger than age 60 and 64 and older can make catch up contributions into a 401(k) account up to the traditional limit. The limits indexed for inflation and subject to change each year. For 2023, the catch up contribution limit is $7,500 per year.

EMERGENCY SAVINGS ACCOUNT (ESA)
December 31, 2023
Optional Provision

Is an Emergency Savings Account only available to employees who are eligible to participate in the retirement plan or ALL employees?

Under SECURE 2.0, ESAs are short term savings accounts linked to retirement plan accounts that are available only to participants who are considered non-highly compensated employees.

Does the $2,500 annual limit mean employees can contribute $2,500 each year?

No. Although, the cap for the ESA is $2,500, a lesser maximum contribution amount can be selected by the plan sponsor. Once the ESA account balance reaches that limit, no further contributions are allowed until the account falls below the limit. There can be no minimum contribution or balance requirements and participants must be allowed at least 1 withdrawal per month.

If you offer the ESA and the employee reaches $2,500 and doesn't take a withdrawal during the year, are those funds rolled into their 401(k) plan or does that money remain in the ESA and grow year over year?

The $2,500 would stay in the emergency savings account and grow at a rate offered under the investment vehicle (such as in a money market fund or other investment designed to protect principal) until the money was withdrawn by the participant. Any additional amounts contributed to the ESA (e.g., under an automatic enrollment ESA)) would be placed in a Roth deferral account under the plan if Roth is offered under the plan; if Roth is not offered under the plan, the contributions to the ESA would be required to stop.

Are emergency savings contributions subject to small balance cash outs?

Upon termination of employment, an emergency savings account may, at the election of the participant, be transferred to a Roth account within the plan, can be rolled over to another eligible retirement plan or IRA or can be distributed in cash to the participant. While there is no guidance on the issue, it is likely that if the participant's total account balance in the plan was less than small balance cash out amount under the plan, the ESA may be distributed to the participant after termination of employment under the small balance cash out provisions of the plan.

How are withdrawals from the ESA taxed?

Contributions to an ESA are made on a Roth basis. Distributions from the account will be considered qualified Roth distributions and will be tax free when distributed. They are also not subject to the 10% early distribution penalty.

Are ESA's subject to contribution limits?

Yes, ESA contributions count toward the annual retirement deferral limit for the 401(k) account, which is $22,500 for 2023. For example, if a participant contributes $2,500 in the ESA account, they could only contribute $20,000 to the 401(k) account.

Are companies required to set up an ESA in their existing plan?

No, the emergency savings provision is an optional provision beginning in 2024.

Do contributions to ESA's count towards the ADP test?

Yes, contributions to an ESA are aggregated with other elective deferrals for purposes of calculating contribution limits, non-discrimination testing and matching contribution limits.

REQUIRED MINIMUM DISTRIBUTIONS (RMD)
Tax years beginning after 2022
Required Provision

When does an individual who is age 72 in 2023 need to take their first RMD?

The SECURE 2.0 Act, increased the required age for starting to take RMDs to age 73 effective for distributions made after December 31, 2022 for individuals who attain age 72 after that date. For those who reach age 72 in 2023, the first RMD must be made for the 2024 tax year no later than April 1, 2025.

Regarding inherited plans, if a person has a company qualified plan and then passes away before their RMD period begins, can their beneficiaries avoid the annual RMD and wait until year 10 to take all the money?

Generally, most non-spouse beneficiaries have 10 years to deplete an inherited 401(k) account (the 10-year rule). The IRS has published proposed guidance and is expected to issue final guidance in 2025 that incorporates both SECURE Act and SECURE 2.0 Act RMD rule changes. In the meantime, please consult with your tax advisor for any specific questions.

STUDENT LOAN MATCHING CONTRIBUTION
Plan years beginning after December 31, 2023
Optional Provision

What is considered a Qualified Student Loan repayment?

The SECURE 2.0 Act defines a Qualified Student Loan repayment (QSLP) as a payment made by an employee to repay a qualified education loan taken to pay for higher education expenses.

Can an employer offer a student loan match if the company does not currently offer any matching contributions?

No. Matching contributions made on QSLPs must be the same rate and follow the same vesting schedule as the plan's regular matching contributions. Only employees that are eligible for regular matching contributions are eligible for QSLPs.

Does the provision apply to parents paying a student loan for their child? Does the provision include Parent Plus loans?

Further guidance is needed. However, it appears that any qualified student loan payment taken by an employee on behalf of themselves, a spouse, or a dependent may qualify.

Will employers get any additional benefit from offering student loan matching?

Employers that offer financial benefits such as retirement plans and financial assistance with student loan debt may help reduce employees' financial stress, improve financial wellness, and attract and retain employees.

For companies that offer an employer non-elective contribution instead of a match, can the student loan match exceed the employer contribution?

If the company does not offer a matching contribution, they cannot offer a student loan match. Employer non-elective contributions do not count as matching contributions.

Is there a cap in place for the student loan employer match?

Yes. A plan sponsor can only match up to the plan limits, so if the plan matches employee contributions up to 4% of pay, the plan can only match student loan payments up to 4% of pay.

If the student loan match is offered, can an employee choose to split their contribution and the employer match between the retirement plan and the student loan?

Yes, an employee who elects to make contributions to the retirement plan, and makes qualified student loan payments may be eligible for matching contributions on both contributions. The amounts would be added together to determine the match. For example, if an employee contributes 2% to the retirement plan, and 3% to qualified student loan payments, and the company matches dollar for dollar up to 4%, the employee would be eligible to receive matching contributions on 4% of their contributions.

How is the student loan match impacted by a plan's vesting schedule?

Matching contributions made on QSLPs must be made at the same rate and under the same vesting schedule as the plan's regular matching contributions.

EMPLOYER TAX CREDITS
Tax years beginning after 2022
Optional Provision

Does the tax credit only apply to new plans?

No. Under the SECURE 2.0 Act, there are new and enhanced start-up tax credits that apply beginning with the employer's 2023 tax year that extend to plans during the first 3 years of their establishment.

Under the enhanced start up tax credit, small employers with up to 50 employees may now be eligible to receive a credit covering 100% of administrative expenses (capped at $5,000 or $250 times the number of non-highly compensated employees if less) for the first three years of a new plan (previously, the tax credit available to employers with up to 100 employees was 50% of start-up administrative expenses for the first three years subject to the cap).

There's also a new credit for employers with 100 or fewer employees that would help offset the cost of employer contributions to a defined contribution retirement plan for up to $1,000 per employee who earns less than $100,000 in FICA wages. This credit is phased out over five years and is reduced for employers with more than 50 employees. Please consult your tax advisor to determine if you qualify for these tax credits.

How are employees defined for the start-up tax credit incentives? Is it a Full Time Equivalent (FTE) basis or is it actually the number of individual employees that were paid throughout the year?

An employee is defined as an employee who made at least $5,000 in the preceding year with the employer.

If a company had a SIMPLE IRA plan and started a 401(k) plan in the next year, would they qualify for the start up administrative cost tax credit?

No. The 401(k) plan would not count as a new plan for purposes of the start-up tax credits because it covered the same employees as the SIMPLE IRA plan. However, if the SIMPLE IRA plan was established within the last three years, it may still qualify for the start-up tax credit.

Do tax credits apply to plans that are spun off from existing MEP plans into their own plans for the first time?

For purposes of the start-up tax credits, because the MEP covered the same employees, it would not count as a new plan.

GENERAL QUESTIONS

Will ADP retirement plans be updated automatically with the mandatory provisions or does the client need to initiate the changes? Will clients receive the amendments from ADP to approve?

Yes, the plan document amendments for SECURE 2.0 Act are generally due by the end of 2025. For plans on the ADP pre-approved plan document, we will provide the amendment as soon as possible prior to the deadline once we have additional guidance. We will also communicate any changes needed in the interim.

Are there any SECURE 2.0 Act provisions that do not apply to employers of a certain size (ie. fewer than 10 employees, greater than 500 employees)?

The SECURE 2.0 Act auto enroll mandate does not apply to:

- Employers that "normally" employ 10 or fewer employees
- An employer in business less than three years
- Plans established prior to Dec. 29, 2022

In addition, the tax credits are generally available only to employers with 100 employees or less.

Does Secure 2.0 Act allow a 529 account beneficiary to roll excess funds into a Roth account if not needed for education fees?

Starting in 2024, 529 account beneficiaries may make tax-free rollovers of up to $35,000 over the course of their lifetime from a 529 account into a Roth IRA. Roth IRA contribution limits apply and the 529 account must have been open for more than 15 years.

Because the documentation previously required for hardship withdrawals is no longer submitted to the employer, is the hardship verification now between the IRS and the employee?

Under SECURE 2.0, employers may rely on employees' self-certification for hardship withdrawals.

The hardship withdrawal must comply with plan provisions so it will still be up to the Plan Administrator to ensure that the withdrawal meets the terms of the plan and regulations. Further guidance is expected on this provision in the future.

If ADP is the service provider for our 401(k) plan and we want to implement some of the optional provisions, what is the process for a plan document change effective January 1?

Please contact your ADP client service team for more information about certain provisions and the timeline for making changes to your plan.

Do any of the SECURE 2.0 provisions apply to SIMPLE IRAs or municipalities with pension plans?

The SECURE 2.0 legislation directly impacts 401(k) plans (including those with a Roth contribution feature), 403(b) plans, and state and local governmental 457(b) plans, as well as IRAs.

Will the SECURE 2.0 provisions require that the plans be amended and restated?

All plans will need to be amended for the Secure 2.0 regulations. The amendments or 401(k) and 403(b) plans are currently due by the end of 2025. Plans will need to be operated in accordance with the provisions as they become effective. Prototype and other plans will not be required to be restated to amend for the SECURE 2.0 provisions.

When is the elimination of notices for eligible but unenrolled employees effective?

Effective immediately, employers who distribute an "Unenrolled Participant Notice" annually to eligible, non-participating employees are only required to provide these employees with (i) one full set of initial documents and disclosures provided upon plan eligibility (such as the summary plan description, the participant fee disclosure statement and any required automatic enrollment notices and safe harbor notices) and (ii) an annual Unenrolled Participant Notice. The Unenrolled Participant Notice must provide key benefits and rights under the plan, with a focus on employer contribution and vesting provisions.

Would a small immediate financial incentive for plan enrollment such as a $25 gift card be taxable and need to be run through payroll?

Effective after December 29, 2022, employers may offer de minimis financial incentives, such as low-dollar gift cards, to boost participation . They cannot be purchased with plan assets. No guidance defining "de minimis" has been provided.

Currently, gift certificates and cash equivalents provided by the employer trigger a payroll tax liability for your business and employee.

How long must the funds from the Saver's Match remain in the retirement savings account before they can be withdrawn? Is there a penalty for early withdrawal?

Prior to age 59 ½, a 10% early withdrawal penalty will generally apply for withdrawing the matching contribution from the retirement account prior to age 59 ½.

Is the Saver's Match income limit based on household income or employee's income?

Saver's match income limits are based on the taxpayer filing status (single, married, married filing separate or head of household).

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