CTR™ Payroll Services

Your Irreplaceable Workforce Management Partner

Anne M. Lavelle
CTR Compliance Specialist

SECURE Act 2.0
And
Benefits Compliance

OVERVIEW OF TOPICS:

- Employment Law Update
- The Basics
- Good News for Employers
  - Tax Credits for Small Employers
  - New Options
  - Are you REALLY a small employer?
- Good News for Employees
  - Required Minimum Distributions
  - Increased Contributions
  - Auto-enrollment/Auto-escalation
- Compliance is Still the Employer's Responsibility
  - Documentation
  - Testing

Employment Law Update:

McLaren Macomb – NLRB decision – Disparagement permitted – defamation prohibited

FLSA regulations anticipated in May…

The Basics of Secure Act 2.0:

- Follows SECURE (Setting Every Community Up for Retirement Enhancement) Act from January 1, 2020 which sought to help retirement savings by:
    - Allowing for larger contributions
    - Expanded eligibility
    - Changed when distributions must be taken.
    - Gave tax credits to small businesses for setting up 401(k)s.

- SECURE Act 2.0 – January 1, 2023 - necessitated because SECURE did not spur enough retirement savings.
    - Allowing for larger contributions
    - Expanded eligibility
    - Changed when distributions must be taken.
    - Gave tax credits to small businesses for setting up 401(k)s.

GOOD NEWS FOR EMPLOYERS!

Tax Credits for “Small” Employers:

A 401(k) is often not an option for small employers because of the cost and compliance issues involved.

- Yet, a 401(k) is often a employee recruiting/retention “carrot.”
- 79% of employees would not work for a company without this type of retirement plan/benefit. (John Hancock Financial Stress Survey 2021)

SECURE 2.0 seeks to help offset these costs by providing small employers with tax credits.

- **Three year start up tax credit** for “small” employers
    - “Small” employer is up to 50 employees.
    - 100% tax credit for start up costs with an annual cap of $5,000
- 50-100 employee companies receive a 50% tax credit.
- Not available for 403(b)s.

Tax Credits con't:

- **Five Year** tax credit to help offset **employer contributions t**o the plan
  - Percentage of contributions up to 1,000 per employee (must earn less than $100K/year)
    - Small Employers:

      First year 100%
      Second year 100%
      Third year 75%
      Fourth year 50%
      Fifth year 25%
    - Phased out incrementally for 51-100 employee companies.
    - Not available for 403(b)s.

New Options:

Joining an on-going multi employer plan does not negate the tax credit options.

- Multi employer plan (MEP) – is a pension plan that covers employees from more than one employer
- Often (but not always) union or industry sponsored
- Small employer will still receive tax credit – even though this plan is not a new or "starter" 401(k) plan.
- NOTE: Watch out for liability/funding issues.

"Starter" 401(k) (or safe harbor 403(b)) – For plan years after December 31, 2023:

- Why the delay?
- Generally, these plans must:
  - Limit contributions to elective deferrals and cap at $6,000 (with inflation index)
  - Include all employees
  - Include certain catch-up contributions.
  - Not subject to "top-heavy" testing

Are you REALLY a small employer?:

- Attribution (or control group) rules apply, if there are multiple companies involved. For example, historically, ownership of a company owned by the husband would be "attributed" to the wife, who owned her own company and vice versa. That meant that the employees of one company would be counted with the second company for benefit plan rules. (E.g. if husband owned a company with 30 employees and wife owned a company with 30 employees – each company was treated as if it had 60 employees – which would ruin the small employer tax credit options for both businesses.)

- Attribution rules are EXTREMELY complex. It is not just husband and wife. It can be between parents/children and companies with common ownership.

- SECURE 2.0 attempts to alleviate some of this burden.
  - Not automatic attribution between parent and child (used to be automatic attribution between parents and children – even in cases of divorce). This is NOT limited to just minor children.
  - Relaxed rules regarding states where there are community property laws.

GOOD NEWS FOR EMPLOYEES!

Emergency Savings Provisions:

- Beginning in 2024 (NOT now):
  - 10% penalty for early distribution (prior to age 59.5) waived for certain personal/family emergencies.
  - Allow a “linking” of an emergency savings account to the retirement plan for amounts up to $2,500.
  - Likely optional and requiring a plan amendment.
  - SECURE Act already allowed for early distribution (without 10% penalty) for childbirth/adoption up to $5,000.
    - This is available NOW if the plan was amended (as of December 31, 2022) to include it.
    - Not related to birth/adoption expenses.
    - Cannot be provided prior to birth/adoption.
    - Each spouse can take $5,000 (even if in same control group plan)
    - Per child (e.g. twins = $10,000)
    - Can be paid back (not required)
    - Optional plan feature

Required Minimum Distributions (RMDs):

- Employees must take distributions from retirement accounts or face significant penalties.

  2022 – Age 72

  2023 – Age 73

  2033 – Age 75 (gradual increase over 10 year period)

- Penalty lowered from 50% of required minimum distribution to 25%

- Penalty waiver option remains intact for now.

Increased Contributions:

- Individuals aged 60 to 63 may contribute at a higher rate
  - Increased catch up limit from $7,500 to $10,000 in 2025.

Auto-Enrollment/Auto-Escalation:

- Starting in 2025 new plans MUST have auto-enrollment (rather than requiring employees to affirmatively opt-in).
  - True for both 401(k) and 403(b) plans.

- Also in 2025, plans must also have auto-escalation provisions.
  - Start with 3% and move up 1% per year, until 10% is reached (but no more than 15%)

- Employees can opt out or change contributions.

Compliance Issues are still the Employer's Responsibility:

Two Main Categories of Compliance issues:

- Documentation
  - Typically, must have a Summary Plan Description, Plan Document, Adoption Agreement, Trust Document and possibly IRS Opinion/Determination Letter, relevant notices (there are many) AND all amendments.
  - Fines for failure to do so (e.g. $110/per day/per requesting employee for plan document; $2,046 for failure to provide auto-enrollment notice)
  - Criminal penalties for intentional violations (e.g. falsifying documents or embezzling).

Compliance Issues Con't:

- Testing
  - Concerns about top-heavy plans or plans that favor (intentionally or unintentionally) certain highly compensated officer/employees and owners (known as "key employees"). Generally, key employees are:

    Owners holding 5% or more of the corporation

    Owners making over $150,000 and owning 1% or more

    Officers making over $215,000 for 2023.

    There are family member attribution rules that are applicable.

    May have to consolidate related plans (in a control group) for testing.
  - Testing required every year (except SIMPLE/safe harbor 401(k)s).
  - If key employees own more than 60% of the plan assets, the plan will fail the test.
  - Consequence of failing the test – includes mandatory contributions to all non-key employees of 3%. Fix going forward by limiting contributions by key employees; increasing participation/contributions by non-key employees.

Thank you for attending!