SITKOFF/O'NEIL ACCOUNTANCY CORPORATION

WEBINAR DECEMBER 5, 2023

NH HICKS

LEGAL AND PENSION CONSULTANTS

Experience Counts

NH HICKS
Legal and Pension Consultants
www.nhhicks.com

Who we are:

NH HICKS is a multi-generational company with one goal: To provide the best service, value and price in the retirement plan industry.

Each client is assigned an administrator and a consultant. Our administrators have over 250 years of combined experience. This provides administrative support by which we can ensure that all plan administration is performed in a timely manner, with a high degree of expertise. Our consultants assure a presence for one-on-one meetings to design and explain a plan that best fits a company's business and its retirement goals.

What we do:

NH HICKS specializes in quality pension plan administration with local service at a reasonable cost. We are a fee only third party pension administration and consulting firm that does not handle any investments or insurance. We offer flexibility through individually designed retirement plans and self-directed retirement accounts. Self-directed gives clients freedom to choose their own investments.

We currently administer over 1000 retirement plans for our clients primarily throughout California and the western United States. Our goal is to provide excellent service to all clients by working closely with their tax and financial advisors.

Given the continuous stream of regulations, our firm and legal department are unsurpassed in experience and constantly updating and adapting to today's regulatory environment. Our annual plan review keeps our clients up-to-date with the best possible plan options along with keeping your plan in compliance with the latest IRS and DOL regulations.

www.nhhicks.com:

Our website is being updated daily with the newest regulations, common trends and articles from leaders in the financial industry. We have adapted to new technology, gone paperless, added value to our website and brought value through actively participating in numerous social media forums. You will also be able to find our complete staff biographies, email addresses, fees, forms, FAQ's and other vital information.

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SITKOFF/O'NEIL ACCOUNTANCY CORPORATION

WEBINAR OUTLINE AND OVERVIEW

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2. Webinar Outline and Overview
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GENERAL OVERVIEW
401(k) PROFIT SHARING PLAN
(For plan years beginning in 2024)

A profit sharing 401(k) plan allows contributions through three different methods: employer profit sharing, matching and employee 401(k) salary deferrals.

Profit Sharing
Contrary to what the name may imply contributions to a profit sharing plan are not based on the profitability of the company. Contributions can be allocated based on the amount of each participant's compensation, job class, and/or age. The employer may vary the contributions year to year, ranging from 0 to 25% of eligible compensation, considering no more than $345,000 (2024 index) individually as compensation. The deadline for company contributions is the company's year-end tax return deadline including extensions.

For eligibility, the employer may be more lenient, but not stricter than excluding any employee: under age 21, less than 1 year of service (may be 2 years if 100% vested), under 1,000 hours per year and union employees. There may also be a class exclusion of 30% of the eligible non-highly compensated employees. Generally, the only class excluded is employees not employed on the last day of the plan year. Once an employee meets the eligibility requirements, they will typically enter the plan the first day of the plan year or seventh month (January 1 or July 1).

Employer contributions may come under a vesting schedule. Vesting is the employees' right to the employers' contribution. The most common schedule is 20% per year up to six years and goes 0-20-40-60-80-100%. Vesting may start at date of hire or for new plans, everyone may start at 0% vesting. The forfeitures under vesting may be reallocated to the remaining employees as a percent of compensation or used to reduce employer contributions.

401(k) / ADP Test
Employees may contribute 100% of compensation up to $23,000 (2024 index). All employee contributions will be 100% vested. There are no Federal or State income taxes on 401(k) contributions. The Actual Deferral Percentage (ADP) test must be passed where the average of the non-highly compensated employees is calculated, and the highly compensated employees may contribute a slightly higher average. Either the current or prior years' non-highly compensated average should be elected at plan set up. In 2024, highly compensated is defined as: over 5% owner, compensation over $150,000 in 2023 (may limit to top 20%), or a spouse or linear relation.

Individuals' age 50 or older may contribute an additional catch-up contribution of $7,500 in 2024. This will not be subject to any tests (ADP) or limits.

Employers may amend their plan to allow for Roth 401(k) contributions. These contributions are after-tax and therefore not taxed at retirement. Employees are not limited by the IRA compensation limits. Roth and regular 401(k) contributions are combined for testing and limited to $23,000 ($30,500 if age 50). Separate accounting is required for the Roth 401(k).

Employers may require an Automatic Enrollment provision with a 30 day employee notice. This usually deducts about 3-10% of compensation unless employees opt out within 90 days after the first salary deferral.

Match
The employer may offer a match, to increase participation, which can come under a vesting schedule. For example, 25¢ on the $1 up to 4% of pay. The match may be discretionary, if the employer allows the employees to change their 401(k) election if the match is changed.

Top-Heavy Test
If your plan is top-heavy (the total of the accounts of all key employees exceeds 60% of the total of the accounts of all employees) you are required to make a minimum contribution to non-key employees equal to the lesser of 3% of compensation or the highest contribution percentage rate for a key employee. You may also contribute the same percent for the key employees. This contribution will come under the vesting schedule. If the plan is top-heavy a contribution can be avoided if none of the key employees use the 401(k) in that year.

For 2024, key employee is defined as: over 5% owner, a >1% owner with compensation at or above $150,000, an officer with compensation at or above $220,000, or a spouse or linear relation.

Safe Harbor Options
An employer may choose to make a 100% vested contribution (except autoenroll) to the employees to pass the ADP and top-heavy tests. This must include eligible employees who terminate before the end of the year. New plans must be in place for at least 90 days. These options are:

1) 3% contribution to all eligible non-highly compensated employees (may also include highly compensated). 3% may do "double duty" counting as a basis for new comparability plans based on job class. Final notice due 30 days prior to plan year-end.
2) Match non-highly compensated employees $1 for $1 up to 3%, plus 50¢ on the $1.00 from 3% to 5% (may increase match to $1 for $1 up to 6% of pay and include highly compensated). Final notice due 30 days prior to plan year beginning.
3) Automatic Enrollment provision at 6% of compensation over 4 years and a $1 for $1 match up to 3 ½% with vesting after 2 years. Final notice due 30 days prior to plan year beginning.

Limits
No more than $345,000 (2024 index) may be considered as a basis of compensation. The most an individual may receive from the three sources (profit sharing, match and 401(k)) is 100% of compensation up to $69,000 ($76,500 if age 50).

The plan is still a profit sharing plan that has matching and 401(k) provisions within. Therefore, the employer match and profit sharing (401(k) excluded) plan contributions are limited to 25% of eligible compensation. Since this is an average of all employer contributions (401(k) excluded), some individuals may receive 100% while the total employer contribution is still under the 25% limit.

Investments
The plans are self-trusteed so the employer can choose any legal non-foreign investment. Typically, the employer will control the profit sharing contribution as it comes under the vesting schedule, and therefore may not yet be owned by the employee.

The employees usually control their own 401(k) contribution. Each employee can have their own segregated account where they can obtain their balance at any time as well as trade the account within a menu of funds. Employees should be given the choice of at least four investments, ranging from conservative to aggressive.

If you have any questions or would like to meet with a plan consultant, please call NH HICKS.

OUTLINE
401(k) PROFIT SHARING PLAN
(For plan years beginning in 2024)

401(k) / Roth
100% up to $23,000
(age 50 - $7,500 catch-up)

MATCH
Limit combined with
Profit Sharing

PROFIT SHARING
0-25%
eligible compensation

ALLOCATION
Proportional
SS Integration
New Comparability

ADP TEST
Usually NHC avg. + 2% = HC max avg.

NHC %
5
10
0
5
5% avg. + 2% = 7% max HC avg.

Prior yr. method on first plan yr.
3% assump. + 2% = 5%

TRUST

- Deposits not taxed to employee
- Tax deferred growth
- Protected from creditors

ELIGIBILITY
Age 21
1 yr.
1,000 hrs. yr.
Union emp.
30% NHC job class

VESTING
Effec. DOH or plan start
401(k) – 100%
PS / Match - usually:
0 – 20 – 40 – 60 – 80 - 100%

TOP-HEAVY TEST
Keys own 60% of trust
May require 3% PS contrib.

INDIVIDUAL LIMIT
100% up to $69,000
($76,500 if age 50)

SAFE HARBOR
Auto. pass ADP and top-heavy test
100% vested / includes term. emp. / exist 90 days

1) 3% PS contrib.
2) Match roughly $1 for $1 up to 4% pay (6% max)
3) Auto Enroll with 3½% match (vesting)

COMPENSATION LIMIT
$345,000

GENERAL OVERVIEW
DEFINED BENEFIT PENSION PLAN

What is a Defined Benefit Pension Plan (DB)?
A Defined Benefit Pension Plan (DB) is a qualified retirement plan where contributions to the plan are based on a participant's age and compensation. While eligibility and distribution options are the same as other qualified plans, an actuary calculates how much a company must contribute to meet the 'benefit defined' in the plan document.

How does a Defined Benefit Pension Plan work?
A DB plan provides a specific benefit at a participant's retirement age. The plan's actuary determines the value of that benefit in the form of a single sum. The DB plan must accumulate the funds to provide that benefit by the time the participant reaches retirement age. The plan accumulates funds through contributions and earnings. An older participant has less time until retirement and therefore less time for the plan to accumulate the funds required to provide his/her retirement benefit. Accordingly, the contribution on behalf of the older participant must be relatively high compared to those required for a younger participant.

Here is a simple example:

Participant	Age	Compensation	Annual Contribution	Benefit at Retirement
Owner	55	$330,000	$328,511	$2,351,062
Employee	21	$24,000	$5,102	$304,181

How can the IRS allow such disparity between the owners and employees contributions?

It only appears there is disparity between the benefits being provided to the two individuals in the example above. The plan is providing the same benefit to both participants. The plan is providing a similar retirement annuity as a percentage of income to both participants. The perceived disparity exists because the owner's compensation is much larger than the employee's compensation and the owner is older than the employee.

This fact pattern is not unusual among small employers. Accordingly, the DB plan can be an extremely powerful tool enabling the small business owner large contributions, while minimizing employee cost.

Flexibility
DB plans are much more flexible than the typical business owner might think. With a valid business reason, these Plans can be terminated in as few as three years after inception (assuming a minimal contribution of $5,000 per year). Proper plan design and effective funding strategies can provide owners with the flexibility they need to annually contribute their desired amount. If the investments under perform, contributions should increase and likewise contributions will decrease if funds exceed plan expectations. Furthermore, if an owner's contribution objectives change considerably, the plan can be amended to provide the needed additional flexibility.

Defined Benefit/Defined Contribution Combo Plan

A Defined Benefit/Defined Contribution Combination Plan (DB/DC) offers owners a two-plan approach to saving for retirement. Since the Pension Protection Act, many plans now allow owners an additional DC contribution and individual 401(k) salary deferrals of $22,500 ($30,000 if age 50).

A general example of a DB/DC Combo Plan is outlined below followed by an explanation of each combination types:

Participant	Age	Compensation	Defined Benefit Contribution	DB/DC Combo Contribution
Owner	57	$100,000	$366,296	$366,296
Spouse	57	30,000	117,778	117,778
Employee 1	30	50,000	60,284	6,850
Employee 2	25	50,000	44,282	6,850

1. **Turbo-charge any Defined Benefit Plan (maximizes benefits for all participants)**
   In addition to the DB plan contribution, owners may contribute up to 6% into a DC plan. Individuals may also contribute an additional $22,500 pre-tax into a separate 401(k) Profit Sharing Plan ($30,000 if age 50). This will work well for an employer without employees; otherwise the plan must satisfy the 401(k) ADP test (a safe harbor may be used).
2. **Floor Offset (good for PBGC covered plans)**
   The Floor Offset establishes a DB Plan for owners and a DC Plan for employees. The benefits provided under the DB Plan are reduced by the value of the participant's account in the DC Plan. The DC Plan participants receive an estimated 5 – 10% of pay contribution.
3. **Super Combo (good for non-PBGC covered plans)**
   This design establishes both plans, and all participants receive benefits in both plans. In the DC Plan, 6% of total compensation is allocated using tiers; where the employees receive an estimated 7.5% and owners receive the remainder. In the DB Plan, owners receive the maximum benefit and the employees receive the smallest benefit permitted.
4. **Carve-Out (good for several owners with only 3 or fewer employees)**
   This design establishes a DB Plan for owners and a DC Plan for employees. It is a great way to maximize contributions for owners while controlling the employee cost. There are requirements which must be considered including at least 2 participants in the DB Plan, 40% of the participants are in the DB Plan, and there are no common participants between the DB and DC company contributions (except 401(k)).
5. **Cash Balance Plans (good for company with multiple owners)**
   This is a DB Plan that specifies both the contribution to be credited to each participant account (such as a percent of pay or a flat dollar amount) and the investment earnings to be credited on those contributions. Each participant has an account that resembles those in 401(k) plan. The advantage of this DB Plan is you know what is going into the plan for each participant and what will be paid out when they leave. A 401(k) Plan may also be added.

If you have any questions or would like to meet, please call NH HICKS.

DEFINED BENEFIT CONTRIBUTIONS

Effective for Plan Years Ending in 2024
With NRA 62 and 5 Years of Participation

Ages/Comp	30,000	50,000	70,000	90,000	110,000	130,000	150,000	170,000	190,000
32	45,127	75,212	91,579	91,579	91,579	91,579	91,579	91,579	91,579
34	49,403	82,338	100,969	100,969	100,969	100,969	100,969	100,969	100,969
36	54,083	90,139	111,328	111,328	111,328	111,328	111,328	111,328	111,328
38	59,207	98,679	122,755	122,755	122,755	122,755	122,755	122,755	122,755
40	64,817	108,029	135,351	135,351	135,351	135,351	135,351	135,351	135,351
42	70,992	118,320	149,248	149,248	149,248	149,248	149,248	149,248	149,248
44	77,787	129,646	164,595	164,595	164,595	164,595	164,595	164,595	164,595
46	85,217	142,028	181,541	181,541	181,541	181,541	181,541	181,541	181,541
48	93,339	155,566	200,253	200,253	200,253	200,253	200,253	200,253	200,253
50	102,220	170,366	220,910	220,910	220,910	220,910	220,910	220,910	220,910
52	111,928	186,548	243,717	243,717	243,717	243,717	243,717	243,717	243,717
54	122,543	204,239	268,985	268,985	268,985	268,985	268,985	268,985	268,985
56	134,148	223,580	296,955	296,955	296,955	296,955	296,955	296,955	296,955
58	137,621	229,369	310,921	310,921	310,921	310,921	310,921	310,921	310,921
60	131,385	218,976	301,092	301,092	301,092	301,092	301,092	301,092	301,092
62	124,894	208,158	291,420	319,960	319,960	319,960	319,960	319,960	319,960
64	118,125	196,876	275,625	341,887	351,937	351,937	351,937	351,937	351,937

- Net Comp is W-2 wages, or self employment income less self employment tax deduction and pension deduction for the self employed and his/her share of any employee cost.
- The individual is assumed to have been in business for at least three years.
- Contribution amounts may be less when using a DB/DC Combination design.
- For owner only plans, increase the amount shown by 1.25 due to the granting of past service.

PLAN TYPE COMPARISONS
(For plan years beginning in 2024)

Assumptions			Plan Types				
Participants	Age	Compensation	25% SEP	3% Match SIMPLE	401(k) PS	DB	DB Combo
Owner	57	$100,000	$25,000	$3,000 + 19,500	$46,000 + 30,500	$366,296	$366,296 + 30,500
Spouse	57	30,000	7,500	900 + 19,500	10,500 + 27,000	117,778	117,778 + 30,500
Employee 1	30	50,000	12,500	1,500 + *(0 – 16,000)*	2,500 + *(0 - 23,000)*	60,284	6,850 + *(0 - 23,000)*
Employee 2	25	50,000	12,500	1,500 + *(0 - 16,000)*	2,500 + *(0 - 23,000)*	44,282	6,850 + *(0 - 23,000)*
Contribution To Owners			$32,500	$42,900	$114,000	$484,074	$545,074
Contribution To Employees			$25,000	$3,000	$5,000	$104,566	$13,700
Owners %			57%	93%	96%	82%	98%

The figures illustrated are dependent on many factors.
Please consult with qualified advisors to determine applicable limits.

TABLE OF VARIOUS LIMITS AND THRESHOLDS

	2023	2024
COMPENSATION LIMIT - *plan year beginning*	330,000	345,000
DC ANNUAL ADDITION LIMIT - *plan year ending*	66,000	69,000
401(k) DEFERRAL LIMIT - *calendar not plan year*	22,500	23,000
CATCH-UP DEFERRAL LIMIT - *calendar not plan year*	7,500	7,500
DB ANNUAL BENEFIT LIMIT	265,000	275,000

HIGHLY COMPENSATED EMPLOYEE
Employee is considered highly compensated if owner in current or prior plan year. Compensation definition only required to be met in prior plan year.

	2023	2024
1) Over 5% owner		
2) Any employee (may limit to top 20%)	150,000	155,000
3) Spouse or linear relation		

KEY EMPLOYEE
Employee is considered key if meets definition in current plan year.

	2023	2024
1) Over 5% owner		
2) Over 1% owner	150,000	150,000
3) Officer (count at least 1)	215,000	220,000
4) Spouse or linear relation		

	2023	2024
TAXABLE WAGE BASE	160,200	168,600

Key Takeaways from the CARES Act

The coronavirus (COVID-19) emergency has placed the United States in a challenging and unique position that many of us have never experienced before. Many employers are facing closures of offices and businesses resulting in layoffs or furloughs, or work from home situations. In response, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020.

Below is a description of the key CARES Act provisions:

Coronavirus-Related Distributions
Plans may permit in-service coronavirus-related distributions from a participant's vested account balance without regard to the normal withdrawal restrictions. This relief is offered through December 31, 2020.

These distributions are subject to the following requirements:
- Limited to $100,000 per tax year, aggregated across all plans of the employer or controlled group.
- Not subject to 20% mandatory tax withholding upon distribution.
- Exempt from 10% early withdrawal penalty generally applicable to distributions made to participants who are 59-1/2 or younger.
- Eligible to be indirectly rolled into an IRA or employer plan within 3 years from the date the distribution is taken.
- Amounts not indirectly rolled into an IRA or employer plan are included in gross taxable income, pro rata, over 3 tax years, unless the participant elects to include all amounts in a single tax year.

Coronavirus-related distributions are available to "eligible" participants who:
- Are diagnosed with a coronavirus (COVID-19 or SARS-CoV-2) illness.
- Have a spouse or dependent diagnosed with a coronavirus illness.
- Experience "adverse financial consequences" as a result of a quarantine, furlough, lay-off, reduction in work hours, business closure, the lack of childcare, or other factors determined by the IRS due to the coronavirus emergency.

A plan administrator may rely on a participant's certification of the above.

Coronavirus-Related Loan Relief
Two types of loan relief were also provided:
1. Plans may allow eligible participants, as defined above, to take loans up to the lesser of $100,000 or 100% of the participant's vested account balance for the specified period.
2. Upon the request of an eligible participant, plan sponsors must suspend loan repayments due on outstanding loans that are in good order for a period of up to 12 months. This relief expires on December 31, 2020. The suspension period is to be added to the original loan term when repayments, including accrued interest, resume, regardless of the length of the loan's original term.

The calculation method of the maximum loan available remains the same including the offset of prior loans within the last year.

Waiver of 2020 Required Minimum Distributions (RMDs)
A Distribution from an "Eligible Retirement Plan," (an IRA, 401(a) plan (including 401(k), 403(b), and governmental 457(b)) will not be required to make any RMD payments for 2020. Specifically:
- Participants who turned age 70½ prior to 2019 will not be required to receive an ongoing RMD for 2020.
- Participants who turned age 70½ in 2019 and who did not receive their first RMD for 2019 on or before January 1, 2020 will not have to receive their first (2019) RMD or their 2020 RMD.
- Beneficiaries receiving life expectancy payments will not be required to receive their 2020 beneficiary RMD.
- Beneficiaries who have an account balance in the plan subject to the five-year distribution rule may extend their required distribution by one year (full distribution of the account must be made by the 6th anniversary of the participant's death).

If a 2020 RMD is provided to any of the above, it may be rolled over to an IRA or employer plan. A participant's RMD or beneficiary's life expectancy RMD for 2021 will need to be paid.

Defined Benefit Plan Relief

Delay in 2020 funding obligations. Under the CARES Act, all single-employer funding obligations due during 2020 are not required to be made until January 1, 2021, with interest for late payments.

Benefit restrictions. Under the CARES Act, a plan sponsor may elect to apply the plan's funded status for the 2019 plan year in determining the application of benefit restrictions for plan years which include calendar year 2020.

Timing of Plan Amendments

The CARES Act includes a remedial amendment period giving plan sponsors additional time to amend their plans for this relief. Sponsors of non-governmental plans have until the last day of the plan year beginning in 2022 to amend their plans, i.e., December 31, 2022 for a calendar year plan. Sponsors of governmental plans have until the last day of the plan year beginning in 2024 to amend their plans.

Administrative Items on which regulatory guidance is needed

Relief from the spousal consent requirements. To date, neither the IRS nor the DOL have provided any guidance that might relieve plans from their notarized spousal consent requirements; however, the industry has provided commentary to the regulatory agencies that relief in this regard is needed.

Unforeseeable Emergency. Another area in which we are awaiting guidance from the IRS is whether a coronavirus-related financial need may be included as part of a nonqualified plan's unforeseeable emergency distributions. Based on current guidance, a coronavirus-related distribution would not be included within this withdrawal right.

We will provide further updates as they become available. If you have any questions, please contact us at 530-891-4975 or email Tom Hicks (TomHicks@nhhicks.com), Debbie Rath (drath@nhhicks.com) or your administrator found at NHHICKS.com

SECURE ACT 2.0

SUMMARY OF MANDATORY AND OPTIONAL PROVISIONS

PROVISION	DESCRIPTION
Provisions Effective by January 1, 2023	
Required Minimum Distributions (RMD) Age Increases	The required minimum distribution (RMD) beginning age increases to 73 starting on January 1, 2023, and to 75 starting on January 1, 2033.
RMD Excise Tax Reduction	Excise tax reduced from 50% to 25% and to 10% if the correction is made in a timely manner.
Expansion of Credits for Small Employer Startup Costs	Provides additional financial incentives for small employers to offer retirement plans through Start-up Credit and Employer Contribution Credit
Treatment of Employer Contributions as Roth Contributions	An employer may give participants the option of receiving matching and nonelective contributions on a Roth contributions if the participant is fully vested.
Self-certification of Hardship and Unforeseen Emergency Withdrawals	A plan administrator may rely on a participant's certification that the hardship withdrawal or unforeseen emergency distribution is based on an immediate and heavy financial need as described in IRS regulations.
Terminal Illness Distributions	Allows terminally ill employees penalty-free distributions, subject to a physician's certification. May be repaid within 3 years.
Qualified Birth & Adoption Distributions (QBAD)	A participant who has taken a QBAD may repay the distribution to a plan accepting rollovers during the three-year period beginning on the day after the date on which the QBAD is received.
Federally Declared Disaster Distributions/Loans	Allows up to $22,000 to be distributed from 401(k) plans, penalty free, for affected individuals in the case of a federally declared disaster. May be repaid within 3 years. Also can permit temporary increase to loan limits and extended loan terms.
Small Financial Incentives for Participation	Employers can offer de minimis financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation in the plan.
Provisions Effective by January 1, 2024	
Roth Plan Distribution Rule	Pre-death RMDs from Roth accounts in 401(k) plans has been eliminated.
Surviving Spouse Election to be treated as an Employee for RMDs	If the participant dies before their required beginning date and the spouse is the sole beneficiary, the spouse may defer the RMD until the year in which the spouse attains their RMD age and have the RMD calculated under life expectancy tables.
Safe Harbor for Corrections of Employee Elective Deferral Failures	Provides a safe harbor rule for the correction of a reasonable administrative error involving automatic contribution or automatic escalation.

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Increase in Dollar Limit for Mandatory Distributions	The dollar amount which a plan may authorize a distribution of a terminated participant's vested account without the participant's consent increased from $5,000 to $7,000.
Withdrawal for Emergency Personal Expenses	Provides an exception to the 10% early withdrawal penalty for distributions up to $1,000 annually used for emergency expenses. Participant has the option to repay the distribution within 3 years.
Emergency Savings Accounts under 401(k) Plans	Employers may offer to their non-highly compensated employees' plan-linked emergency savings accounts. Contributions are treated as Roth and cease once the account balance meets or exceeds $2,500. Eligible for employer match.
Penalty-free Withdrawals for Victims of Domestic Abuse	Permits participants who self-certify they experienced domestic abuse to withdraw the lesser of $10,000 or 50% of the vested balance within one year of incident. The withdrawal is not subject to the 10% early withdrawal penalty and can be repaid with three years.
Starter 401(k) Plans	Permits employers who do not sponsor a retirement plan to offer a starter 401(k) or 403(b) plan. The plan has only deferrals provided through default enrollment with deferral limits the same as IRAs.
Student Loan Payments for Matches	Permits an employer to make matching contributions with respect to "qualified student loan payments."

Provisions Effective by January 1, 2025

Automatic Enrollment and Increases for New Plans	Unless employees opt out, new 401(k) plans must automatically enroll participants in the plan starting with a deferral of 3-10%. Deferrals must increase 1% per year. Exemptions include small employers (10 or less employees), businesses less than 3 years old, and church and government plans. Plans in existence prior to December 30, 2022 are also exempt.
Coverage for Long-Term Part-time Employees	Part-time employees are eligible to make deferrals if they work more than 500 hours in three consecutive years starting on January 1, 2021. Secure Act 2.0 reduces the years from 3 to 2 for years starting on January 1, 2023.
Increased Catch-up Contribution Limits	Increases catch-up limits to the greater of $10,000 or 50% more than the regular catch-up amount for individuals who have reached ages 60, 61, 62, and 63.

Provisions Effective by January 1, 2026

Roth Catch-up Contributions	All catch-up contributions can only be made as Roth contributions if the participant's prior year compensation is greater than $145,000.
Paper Benefit Statements	Requires a defined contribution provide at least one paper benefit statement to participants annually and one paper benefit statement every three years to participants in a defined benefit plan, unless a participant elects otherwise.

HICKS NOTES

NH HICKS Experience Counts
Legal and Pension Consultants
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October 2023 By Tom Hicks, Attorney At Law

SECURE ACT 2.0: WHAT YOU NEED TO KNOW

On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023. The SECURE Act 2.0, as it's known, expanded and clarified the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) of 2019. The SECURE Act created and gave additional incentives for employers and employees to participate along with provision providing COVID-19 relief on distribution. For a summary of the SECURE Act, click here.

The SECURE Act 2.0 contains over 90 provisions expanding coverage and increasing retirement savings, simplifying, and clarifying retirement plan rules, making technical amendments to the original SECURE Act, and changing some administrative, revenue, and tax court retirement provisions. Some provisions are mandatory, some are optional and all available for different years.

The key to understanding the many provisions is to first find out what year the provisions are effective and if the provisions are mandatory. Finally, understanding the optional provisions and whether your client will want to add them to their existing or new plans. In addition, there are rules and incentives for new plans.

Given the size and scope of this law, we have created a useful chart which shows the requirements for each provision by effective date.

PROVISIONS FOR NEW PLANS

Solo 401(k) Plans. Self-employed individuals (Sole Proprietors and Partnerships) now have until they file their tax returns to adopt and fund contributions including 401(k) salary deferrals. Prior to the change, they could only fund employer contributions when their plan was adopted after the end of the plan year.

Small Employer Start-up Tax Credits. The existing new plan Start-up Tax Credit for employers with 1 to 50 employees increased from 50 to 100% of plan expenses with an annual cap of $5,000. The SECURE Act 2.0 establishes an Employer Contribution Tax Credit for plan contributions made by the employer. The credit is a percentage of the employer contribution up to $1,000 per employee, provided the employee earned $100,000 or less during the plan year. The percentages are 100% for the first two years, 75% for the third year, 50% for the fourth year, and 25% for the fifth year.

Automatic Enrollment. For plan years beginning after December 31, 2024, an employer who has been in existence for at least three years with more than 10 employees must automatically enroll participants unless the employee opts out when starting a new 401(k) plan. Under these rules, employees will start with a salary deferral of at least 3% of compensation. The rate of salary deferral increases annually by 1% of compensation until reaching at least 10%, but no more than 15% of compensation.

PROVISIONS FOR ALL PLANS

Here is a quick explanation of the various provisions available to all plans.

Roth accounts. Designated Roth accounts in employer plans are encouraged under the new law. These accounts within 401(k) plans are no longer subject to required minimum distribution (RMD) rules. This change mirrors the provisions of Roth IRAs.

Coverage of Long-Term Part-time Employees. In 2019, the SECURE Act changed provision to allow long-term part-time employees with three consecutive years of service of at least 500 hours to enter a 401(k) plan. They would only be eligible for 401(k) salary deferrals. No employer contribution is required. Under the SECURE Act 2.0, only two consecutive years of service of 500 hours are required. For transition purposes, pre-2021 service employees are disregarded for eligibility and vesting rules. The participant will receive one year of vesting service for each plan year in which they work at least 500 hours.

Incentives to Participate. Prior to the SECURE Act 2.0, an employer could not offer incentives to encourage employees to contribute to a retirement savings plan. For plan years beginning after December 29, 2022, an employer is allowed to offer de minimis, immediate financial incentives to encourage employees to join retirement plans. De minimis is not defined in the new code so we will have to await further guidance on what is allowed. Time will tell.

Overfunded Defined Benefit Plans. Many employers have overfunded defined benefit plans and find it beneficial to transfer excess assets to an account to pay retiree health benefits. Those provisions, which would have expired after 2025, have been relaxed and extended until 2032.

Correcting Errors. The SECURE Act 2.0 greatly expands methods and reasons for self-corrections. For existing programs, click (correction programs) . Administrative errors that include over payments, along with vesting, participation and other errors may be self-corrected as opposed to getting IRS approval. Retroactive amendments are allowed to fix the errors made. The law provides a grace period for making corrections of nine and a half months after the end of the plan year in which the mistake was made for any error occurring after 2023.

Required Minimum Distribution (RMD) Rules. Individuals turning age 72 during 2023 or later will start their required minimum distributions at age 73. For those reaching age 74 after December 31, 2032, their RMD starts at age 75.

RMD Penalty Relief. If required minimum distributions are not taken, the excise tax penalty is reduced from 50 to 25% for taxable years beginning in 2023. The penalty is further reduced to 10% if correction is made within two years after the end of the taxable year in which the distribution was missed.

Catch-up Contributions. Individuals age 50 and older can contribute a salary reduction catch-up contribution. The current catch-up contribution is limited to $7,500 annually. For tax years beginning after 2024, employees who are 60-63 years old can contribute a higher catch-up contribution of the greater of $10,000 or 50% more than the regular catch-up limit.

Annuity Investment Option. Annuity Contracts will be more readily available within employer plans. Plan participants in account balance plans may want to use a portion of retirement plan savings to purchase annuities.

Student Loan Repayment. Beginning in 2024 with the SECURE Act 2.0, an employee's student loan debt repayment can be treated as the employee's salary deferral to a 401(k) plan. This is an option that an employer can add to their retirement plan.

Emergency and Disaster Relief. The new law clarifies early ones that allowed employers to add provisions to their plans to help non-highly compensated employees save for emergencies. Employee contributions to these new emergency savings accounts are generally limited to no more than $2,500. The SECURE Act 2.0 also allows plan participants to withdraw up to $1,000 annually for meeting unforeseeable emergencies. These distributions are not subject to the 10% penalty for early withdrawal. Only one distribution can be made per year. An employee can repay the amount to the plan within three years.

Effective for disasters after December 27, 2020, The SECURE Act 2.0 permanently exempts plan distributions from the 10% penalty for early withdrawal of up to 22,000 for bona fide disaster losses. In addition, a participant can borrow from the qualified plan up to a maximum of $100,000 for disaster relief. A qualifying disaster-related distribution can be repaid over three years.

In conclusion, it appears the IRS and DOL are trying to increase participation in small employer plans by offering increased tax incentives, more uses of 401(k) money, auto-enrollment, increased catch-up contributions and emergency relief distributions. Corrective relief will be a great help in fixing mistakes and moving on. Tracking distributions for disaster and emergency relief can be problematic.

Understanding which provisions apply when and what benefits they can provide is crucial to understanding how the SECURE Act 2.0 will affect our clients.

Please note this is a brief summary and not an exhaustive list. For more information, check out our additional articles here.