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SECURE 2.0 Emergency Personal Expense and Domestic Violence Distribution Rules

In 2022, Congress passed the SECURE Act 2.0 to enhance access to retirement savings vehicles and make it easier for individuals to save for retirement. Among the incentives for individuals to save were optional modifications to 401(k), 403(b), and governmental 457(b) plans that would allow participants to take early withdrawals in certain circumstances.

The IRS recently issued Notice 2024-55 to address situations in which plan participants may want to access their retirement savings for critical personal or family emergencies. The Notice provides additional guidance on two, special in-service distribution rules added by SECURE 2.0: one for emergency personal or family expenses and one for victims of domestic violence. These lifelines for individuals in dire situations allow plan participants to access much-needed funds from their retirement accounts without the 10% additional tax typically imposed on early withdrawals, even if they have not otherwise experienced a distributable event.

Employers may add one or both of these optional provisions effective for plan years beginning after December 31, 2023. Notice 2024-55 addresses some questions that may have caused some plan sponsors to hesitate in doing so.

IRS Guidance

Generally, withdrawals from retirement plans before age 59½ are subject to a 10% additional tax penalty. However, Congress recognized that certain situations warrant exceptions to this rule. Notably, SECURE 2.0 allows for penalty-free distributions for:

1. Emergency personal or family expenses; and
2. Domestic violence survivors.

Definitions and Eligibility

1. Emergency Personal or Family Expense

Emergency personal expenses are defined as "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses." Examples might include:

- Medical care;
- Accident or loss of property due to casualty;
- Imminent foreclosure or eviction from a primary residence;
- The need to pay for burial or funeral expenses; or
- Auto repairs.

To qualify for the exception to the 10% early distribution penalty, the expense must be necessary, unforeseen, and immediate. Routine costs or anticipated expenses do not qualify under this provision. Participants may take one distribution of up to $1,000 per calendar year for such expenses, and they may self-certify that they are eligible for it. Participants also have the right to repay any amount withdrawn as an emergency expense distribution within three years.

2. Domestic Violence Survivors

Domestic abuse, as defined by the IRS, includes "physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household." This can encompass violence from a partner, spouse, or other individuals in a domestic setting. To qualify for a domestic violence distribution, a participant must certify all of the following:

- The participant meets the definition of a domestic violence victim as defined in SECURE 2.0 and the plan;
- The total amount of the distribution, including any other domestic violence distributions from other retirement plans, does not exceed the lesser of $10,000 or 50% of their vested account balance; and

- The distribution is made within one year from the date of the domestic violence incident.

Plan administrators may rely on the participant's self-certification that they satisfy these requirements. Like emergency expense distributions, domestic violence withdrawals may be repaid within three years.

Distributions may be used to address the impacts of domestic violence. These might include:

- Legal fees associated with securing protection orders;
- Counseling or mental health services; or
- Relocation expenses for safety.

Implementation by Retirement Plans

Plan sponsors and administrators have a crucial role in implementing these optional distribution provisions. Plans must be amended to incorporate these exceptions, and administrative procedures and participant communications must be created in the interim.

Employers should consult with legal counsel and recordkeepers to ensure compliance. The deadline to adopt discretionary amendments to allow for emergency personal expenses and domestic violence distributions is generally December 31, 2026. Later deadlines apply to governmental and collectively bargained plans. Before then, administrators need to establish procedures for processing these distributions. Educating plan participants about these provisions is essential. Participants should be informed about the types of expenses that qualify, the documentation required, and the process for requesting such distributions.

Key Takeaways

1. Optional Provisions

These special in-service distribution provisions are optional for plan sponsors. Employers should consider whether one or both would be helpful to their workforce. They should also consult with their recordkeeper to evaluate any administrative hurdles.

2. Tax Reporting

Although the 10% additional tax is waived, distributions must still be reported as income. These distributions are not eligible for rollover. Plan participants will need to account for these distributions on their tax returns, and they should receive Form 1099-R, which reports the distribution amount.

3. Consultation with Financial Advisors

Given the complexity of retirement plan rules and the significant consequences of early withdrawals, plan administrators should encourage plan participants to consult with a financial advisor. Advisors can help plan participants navigate the process and understand the broader implications for their financial future. Even though the early withdrawal penalty is waived, distributions reduce the amount of savings available for future retirement needs (unless the participant repays the distributions within the three-year window). Plan participants should weigh the immediate benefits against potential future financial impacts.

Conclusion

Notice 2024-55 provides valuable guidance to employers who are thinking about adding one of the SECURE 2.0 special distribution rules to their plan. Such distributions can offer relief for those facing urgent financial needs or personal crises.

This blog was drafted by Tiffany Santhavi Watts, an attorney in the Spencer Fane Houston, Texas office. For more information, visit www.spencerfane.com.

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