SECURE 2.0 encourages employers to expand employee benefits (not just retirement plans)

These six provisions highlight how 401(k) plans will be increasingly serving additional holistic purposes, such as emergency savings, student loan matches and penalty-free withdrawals for domestic abuse victims.

By **Kevin Walsh and Jacob Eigner** | February 27, 2023

SECURE 2.0 Act

401(k) plans are moving away from serving as voluntary retirement savings vehicles and towards a future where plans are mandatory and serve as a financial backstop to more than just retirement. This shift began before SECURE 2.0 (https://www.benefitspro.com/2022/12/29/congress-passes-secure-2-0-how-retirement-plans-will-change-in-2023-and-beyond/), as Congress approved the use of 401(k) funds to help individuals recover from designated disaster areas with the enactment of special rules related to the use of funds to purchase a home, and with the recent trend towards more holistic financial wellness offerings from recordkeepers and other 401(k) service providers.

The changes enacted by SECURE 2.0 show that this transition is picking up speed. It is going to be important for HR professionals to be ready for these changes, as retirement plans are increasingly no longer voluntary and no longer just for retirement.

There are six provisions HR professionals will want to be ready for that highlight this shift.

1. **Expansion of automatic enrollment:** Starting in 2025, employers who start new 401(k) or 403(b) plans will be required to auto-enroll eligible employees in the plans. Similarly, those plans will be required to automatically increase the percentage of total salary that an employee contributes by 1% each year until the contribution would reach at least 10%. However, employees will be able to opt out.
2. **Emergency savings accounts:** SECURE 2.0 allows employers to offer short-term emergency savings accounts (https://www.benefitspro.com/2023/01/19/secure-2-0-links-emergency-savings-to-retirement-plans-8-best-practices/) linked to the accounts of 401(k) plan participants. Non-highly compensated employees would be permitted to make after-tax contributions to these accounts, and distributions would be tax free. Participants are not allowed to contribute to these accounts after the balance reaches $2,500 (indexed to inflation).
3. **Student loan payments potentially counted for match**: Prior to SECURE 2.0, economists had noted that younger participants often failed to contribute enough to their 401(k) to capture the full employer match. One theory for this has been that those participants are prioritizing student loan repayment instead of retirement security. SECURE 2.0 provides employers discretion to include qualified student loan payments (https://www.benefitspro.com/2022/10/17/save-for-retirement-or-pay-off-student-loans-secure-2-0-will-help-employees-do-both/) when calculating the employer's 401(k) "match". HR professionals that serve plans with high populations of participants who may have student debt – younger workplaces or workplaces where certain degrees are required – may be particularly interested in this provision.
4. **Self-certification of hardship withdrawals**: Currently, the process of verifying hardship for the purposes of hardship withdrawals from defined contribution plans tends to require employers to collect documentation like medical bills from employees to ensure that the employee was eligible for the hardship withdrawal. SECURE 2.0 reduces the administrative burden on both the participant and the employer by allowing plan participants to self-certify; that is, it allows employers to take the employee's word that they are eligible for these hardship withdrawals.
5. **Penalty-free withdrawal for domestic abuse victims:** Beginning in 2024, victims of domestic abuse (including individuals whose child or other household member has been a victim) will be permitted to withdraw up to the lesser of 50% or $10,000 of their retirement account penalty-free. Like the hardship withdrawal provision, plans will be permitted to rely on self-certification by employees. Participants who take such withdrawals may have the opportunity to repay the amount withdrawn to their 401(k) account.
6. **Penalty-free withdrawals for terminally ill participants:** SECURE 2.0 allows penalty-free distributions of qualified retirement accounts to terminally ill participants. To be eligible, a participant must have a condition that is reasonably expected to result in death within 84 months. Under certain circumstances, participants may be eligible to repay the amount withdrawn.

Related: SECURE 2.0 will change retirement plans, but employers need to ramp up financial wellness (https://www.benefitspro.com/2022/10/10/secure-2-0-will-change-retirement-plans-but-employers-need-to-ramp-up-financial-wellness/)

These six provisions highlight how 401(k) plans are increasingly serving additional purposes. HR professionals should discuss with corporate leadership the increasing creep of employee benefits and may want to consult with outside counsel to determine if plan changes are needed to implement these provisions. Hopefully, as employees become better able to save and receive advice holistically, we see employees attain greater financial security.

Kevin Walsh *and* ***Jacob Eigner*** *are both attorneys at Groom Law Group, Chartered (https://www.groom.com/). They advise plan sponsors and other ERISA fiduciaries on how to comply with evolving ESG guidance as well as other issues related to 401(k) plan investing.*