

Be Our Guess!

Upcoming 2024 Changes



Your Co-Hosts



Maureen Pesek



Joanne Pecina



Tim McCutcheon

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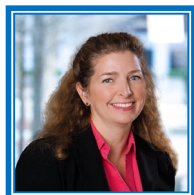
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Your Presenters Today



Ilene H. Ferenczy

S. Derrin Watson



Alison J. Cohen



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Here We Are ... November 2023



- A whole bunch of new legal provisions are currently or imminently effective
- Where's the IRS? Crickets ...
- Where's the DOL? Crickets ...
- What should plan sponsors (and their advisors) do?



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What We Will Do Today

- Highlight the SECURE and SECURE 2.0 provisions that are effective now or in 2024 for which there are significant questions outstanding
- Give our best **guess** as to what we think the ultimate guidance will provide (but no promises!)
- Discuss what plans should do in the meantime and the risks of any options



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Standard for Compliance

- Before regulations or other guidance is issued, plan sponsors must exercise *good faith compliance*
 - What does that mean?
 - Cannot ignore rules that become effective
 - Make reasonable guess as to what the IRS will require
 - Be consistent
 - Be prepared to correct if worse comes to worst



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Example

- LTPT is effective 1/1/24
 - Cannot ignore the law and continue to exclude LTPTs
 - Cannot go against any legal provision that is clear
 - E.g., cannot “interpret” the rules to mean that LTPTs need 700 hours of service to enter the plan when the law is clear that the cut-off is 500 hours
 - *Can* interpret what to do about class exclusions that apply to all employees (but see below)



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TALE AS OLD AS TIME: AMENDMENTS FOR CHANGED PROVISIONS

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Plan Amendments

- Plan documents do not have to be updated for SECURE/CARES/SECURE 2.0 until the last day of the first plan year beginning on or after 1/1/2025
 - Governmental/union plans have 2 more years after that
 - Anti-cutback relief available
 - Must operate in accordance with law and amendment as ultimately adopted



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Restatements

- The Cycle 3 restatements for DB plans (due 3/31/2025) do not incorporate the new laws
- We do not expect the Cycle 4 restatements for DC plans (likely due 2027-2029) to incorporate the new laws
- What this means:
 - The 2025 deadline will be amendments, not restatements, unless the IRS does something
 - We will have patch amendments for a long time



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Amendments

- What needs to be amended now, rather than at end of SECURE/CARES/Taxpayer Certainty and Disaster Tax Relief Act/SECURE 2.0 remedial amendment period?
 - Unlike prior laws, SECURE/CARES/SECURE 2.0 specifically extends amendment deadline to anything being adopted “pursuant to any amendment made by this Act or pursuant to any regulation issued” by Treasury or Labor
 - So, embodies mandatory and discretionary issues



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Remember ...

- Terminating plans need to be amended for any changes that were effective prior to termination
- Deadline: date of termination (?)
- If not done, can we “self-correct” by adopting the amendment when we realize we’ve got a problem?



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**KILL THE BEAST!
LONG-TERM PART-TIME
EMPLOYEES**



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Long-Term Part-Time Employees

- Must be let into the plan as of 1/1/2024, if eligible
- Get no employer contributions
- Not in ADP/ACP/Coverage testing
- Not eligible for TH minimum benefits



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Long-Term Part-Time Employees

- Key unanswered question: Can we exclude:
 - People in groups that are generally excluded by the plan (e.g., by location, by job classification, by employer)?
 - Seasonal and part-time employees?



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Long-Term Part-Time Employees

- What we **think** the IRS will ultimately say
 - Can exclude people in generally excluded classes that (i) have nothing to do with service; (ii) pass coverage
 - Do not need to take the LTPTs into account in coverage testing ... *maybe* ... but OEE separate testing will help
 - Cannot use classification that is a proxy for hours of service, such as seasonal or part-time
 - The “1,000 hour” failsafe doesn’t work for LTPT



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Long-Term Part-Time Employees

- What do we recommend in the meantime?
 - Include the seasonal, part-time people in the plan for deferrals if they are LTPTs
 - Advise clients of the risk of excluding LTPTs in excluded classes (other than seasonal/PT) and let them select risk level
 - If IRS says they cannot be excluded, they will be required to get EPCRS corrective contributions



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Long-Term Part-Time Employees

- Note: need special notices for LTPTs for auto-enrollment and safe harbor rules
 - Due 12/1!
 - See sample:
<https://www.relius.net/News/Docs/Long%20Term%20Part%20Time%202024%20notice.docx>
 - What to do if notices are already issued?



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LTPT Rules Only Apply if the Only Reason a Person Participates is LTPT

- Can avoid LTPT complexities if part-time people come into the plan under the eligibility provisions
 - e.g., passage of 12 months since hire
 - e.g., 500 hours in eligibility computation period
- But, exclusions from ADP, coverage testing do not apply
- S2.0 permits TH exclusion for all “otherwise excludible employees” (<1 year, age 21), so LTPT would not get TH minimum



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Be Careful of Dual Eligibility in SH Match Plan

- If some Ps are not eligible for all contributions, SH Match plan is not exempt from TH
 - E.g., immediate eligibility for deferral, 1 year wait for SH or NEC
 - Can still exclude otherwise excludables from SH and TH (can still use OEE for testing)
 - BUT, any other employee who does not defer or gets match of <3% of pay must get TH minimum



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**I USE ANTLERS IN ALL
OF MY DECORATING:
ROTH EMPLOYER
CONTRIBUTIONS**



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Roth Employer Contribution

- Currently effective
- But, the pointy ends of this provision make it unworkable without guidance:
 - How/when to make elections
 - How/when to tax through to participants?
 - Subject to FICA?



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Roth Employer Contribution

- What we **think** the IRS will ultimately say:
 - Election made anytime before allocation date
 - If made after such date, need to do conversion instead
 - Taxed when? Absolutely no idea
 - Use same reporting system as Roth conversions, i.e. Form 1099-R
 - No FICA withholding (like conversion)



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Roth Employer Contribution

- What we **think** the IRS will ultimately say:
 - Election is irrevocable as to contributions already so classified (can revoke for future contributions)



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Roth Employer Contribution

- What do we recommend in the meantime?
 - Don't do it!
 - It's a discretionary provision, so no need to put plan at risk before we have guidance
 - If client really wants to offer this, use Roth conversion/in-plan Roth rollover rules
 - Can the plan permit "standing" conversion election?
 - Probably best just to allow participant to convert once per year



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Roth Employer Contribution

- What do we recommend in the meantime?
 - Risk:
 - If FICA withholding is needed, failure to do so puts the plan/company at risk for withholding liability



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**THERE MAY BE
SOMETHING THERE THAT
WASN'T THERE BEFORE:
PLESAs**



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PLESAs



- Yeah, this ain't no fairy tale, guys ...
- No matter how paternalistic this employer is, no matter how kind they want to be to their employees ...
- We recommend that everyone hold off on PLESAs until there is guidance ... and perhaps even after that



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**TRY THE GRAY STUFF,
IT'S DELICIOUS!
OK PROVISIONS TO
INSTITUTE**



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Provisions That We Think Can Safely Be Instituted Without IRS/DOL Guidance

- Other distributions
 - Domestic violence
 - Disasters
 - Personal Emergency
 - Terminal Illness (but note, need a distributable event other than illness)
- \$7,000 cashout
- No TH for otherwise excludable employees



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Provisions That We Think Can Safely Be Instituted Without IRS/DOL Guidance

- Hardship (and other distribution) self-certification
 - But weigh pros and cons and client attitudes towards potential fraud vs. ease of administration
 - If you are 3(16) and administer distributions, consider addendum for this to your service agreement
- No required RMD from Roth accounts
- Deferral incentives of less than [?]



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Provisions That We Think Can Safely Be Instituted Without IRS/DOL Guidance

- 403(b) hardship flexibility
- 457(b) deferral election timing
- Change from SIMPLE IRA TO 401(k) midyear/
permit rollovers from SIMPLE IRA
- Notice to unenrolled participants



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Questions?



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A Few Reminders

- ASPPA/NIPA and ERPA certificates will be emailed within a day or two.
- Go to ERISApedia.com WEBCAST tab to retrieve previous certificates.
- After the webcast you will be presented with a short Google Forms survey. Please let us know how we are doing.



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For Further Study

Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.



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