NCCMP 2023 INTERIM CONFERENCE

Secure 2.0 for Multiemployer Plans

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SECURE 2.0 FOR MULTIEMPLOYER PLANS

- On December 29, 2022, President Biden signed into law the "Consolidated Appropriations Act, 2023," which included Division T, a major package of retirement savings provisions known as "SECURE 2.0 Act of 2022" ("Secure 2.0").
- Secure 2.0 contains 92 separate provisions regarding retirement plans.
- Some provisions of Secure 2.0 were effective immediately, other provisions have different effective dates.
- For collectively bargained plans, the general deadline to adopt plan amendments to reflect changes required by SECURE 2.0 is the last day of the first plan year beginning on or after January 1, 2027.

SECURE 2.0 - HIGHLIGHTS

- **<u>Required Minimum Distributions ("RMDs")</u>.** For participants who turn age 72 after December 31, 2022, the required beginning date for RMDs increased from age 72 to age 73 starting. For participants who attain age 74 after December 31, 2032, the required beginning date increases to 75
- **<u>Surviving Spouse Treated as Participant for RMD</u>.** Starting in 2024, if the participant dies before commencing RMDs and the participant's surviving spouse is the designated beneficiary, the surviving spouse may irrevocably elect to be treated as the participant and, therefore, delay beginning RMDs until the participant's required beginning date
- **<u>RMDs Not Required for Roth Accounts</u>.** Starting in 2024 for plans that accept Roth contributions, Participants will no longer be required to take RMDs from such Roth accounts
- **<u>RMD Tax Reduction</u>**. December 29, 2022, Section 302 of SECURE 2.0 reduces the penalty for failure to take required minimum distributions from 50 to 25 percent. If a failure to take a required minimum distribution is corrected in a timely manner, as defined under this Act, the excise tax on the failure is further reduced from 25 percent to 10 percent

SECURE 2.0 - HIGHLIGHTS

- **<u>Catch-Up Contributions for High-Income Participants</u>**. Catch-up contributions for individuals whose wages from the preceding calendar year exceed $145,000 must be made on a post-tax "Roth" basis
- **<u>Expanded Catch-Up Contributions</u>.** Starting in 2025, Participants ages 60 to 63 may make catch-up contributions to up to the greater of $10,000 or 150% of the regular catch-up amount for 2024 (indexed for inflation after 2025)
- **<u>Student Loan Payments as Elective Deferrals.</u>** Starting in 2025, 401(k) plans, 403(b) plans, and SIMPLE IRA may be amended to allow employees with student loan debt to receive matching contributions based on the amount of any "qualified student loan payments." A "qualified student loan payment" is broadly defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee

SECURE 2.0 - HIGHLIGHTS

- **<u>Expanding Automatic Enrollment</u>.** Starting in 2025, "new 401(k) plans" must provide for automatic enrollment with 3% initial deferral, increased by 1% until reaching not less than 10% but no more than 15%
- **<u>Start-Up Credit</u>.** Effective for tax years beginning after December 31, 2022, Employers with up to 50 employees starting new plans may receive a tax credit equal to 100 percent of the qualified startup costs. The amount of the additional credit generally will be a percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of $1,000

SECURE 2.0 - HIGHLIGHTS

- **<u>No Early Withdrawal Penalty for a Participant with a Terminal Illness</u>.** Starting in 2023, if a plan allows for a distribution for a terminal illness, a participant who has been certified by a physician as having a "terminal illness" may receive such distribution without incurring the 10% early distribution penalty
- **<u>Emergency Personal Expense Distribution</u>.** Starting in 2025, defined contribution plans may be amended to allow participants to elect one (1) penalty-free withdrawal of up to $1,000 per year as an "emergency personal expense distribution" which is defined as an "unforeseeable or immediate financial needs relating to personal or family emergency expenses. The participant has the option to repay the distribution within three (3) years. No further emergency distributions are permissible during the 3-year repayment period unless repayment occurs

SECURE 2.0 - HIGHLIGHTS

- **Pension-linked Emergency Savings Accounts (ESAs).** Starting in 2025, provides employers the option to offer non-highly compensated employees (NHCEs) pension-linked emergency savings accounts (ESAs). Employers may automatically opt NHCEs into ESAs no more than 3% of salary, and the portion of an account attributable to the NHCE's contribution is capped at $2,500 (or lower as set by the employer). Once the cap is reached, the additional contributions can be directed to the NHCE's Roth defined contribution plan (if they have one) or stopped until the balance attributable to contributions falls below the cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions with an annual matching cap set at the maximum account balance – i.e., $2,500 or lower as set by the plan sponsor. The first four withdrawals from the account each plan year may not be subject to any fees or charges solely on the basis of such withdrawals

SECURE 2.0 - HIGHLIGHTS

- **<u>Repayment of Qualified Birth or Adoption Distributions</u>.** Starting in 2023, if a plan allows for a "qualified birth or adoption distribution," then (1) up to $5,000 can be distributed without incurring the 10% early distribution penalty; and (2) repayment is allowed but must be made within three (3) years starting from the day after the qualified birth or adoption distribution is received
- **<u>Involuntary Cash-Out Limit May Be Increased</u>.** Effective January 1, 2024, the limit at which plans may, without the consent of the participant or their spouse, distribute or rollover benefits may be increased from $5,000 or less to $7,000 or less. Under current IRS and DOL rules, however, any involuntary distribution of benefits valued at more than $1,000 must be automatically rolled over to an IRA unless the participant elects otherwise

SECURE 2.0 - HIGHLIGHTS

- **Overpayments**. Effective for overpayments discovered on or after December 29, 2022, retirement plan fiduciaries have the latitude to decide not to recoup overpayments that were mistakenly made to retirees. If plan fiduciaries choose to recoup overpayments, limitations and protections apply to safeguard innocent retirees. This protects both the benefits of future retirees and the benefits of current retirees. Rollovers of the overpayments also remain valid. Fiduciaries may proceed with respect to determinations made prior to the date of enactment of this Act to seek or not to seek recovery of overpayments. Plan fiduciaries remain responsible for any overpayments resulting from any breach of their fiduciary duties

SECURE 2.0 - HIGHLIGHTS

- **Defined Benefit Annual Funding Notices**. Starting in 2024, the annual funding notice required by Section 101(f) of ERISA must include a statement as to whether a plan's funded percentage for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages)
- **Document Simplification**. Section 319 of SECURE 2.0 directs the agencies to make recommendations to Congress to consolidate, simplify, standardize, and improve reporting and disclosure requirements no later than 3 years after the date of enactment of this Act. Section 341 directs the Treasury and DOL Secretaries within 2 years to amend regulations to permit a plan to consolidate certain required plan notices

SECURE 2.0 - HIGHLIGHTS

- **<u>Retirement Plan "Lost and Found</u>."** Section 303 of SECURE 2.0 directs DOL to create, within 2 years of enactment, a national on-line searchable lost and found database for Americans' retirement plans to enable retirement savers, who might have lost track of their pension or 401(k) plan, to search for the contact information of their plan

MULTIEMPLOYER CONCERNS WITH SECURE 2.0

- Roth Catch-Up Contributions for Workers Earning $145K+
- Automatic Enrollment
- Required Minimum Distributions ("RMDs")
- Overpayments

MULTIEMPLOYER CONCERNS WITH SECURE 2.0

- June 27, 2023 Meeting with Treasury and IRS
- Nationwide group of 20 Multiemployer Fund attorneys and representatives, including NCCMP and AFL-CIO met with 14 Treasury and IRS officials to discuss concerns about impact of Secure 2.0 on multiemployer plans
- Group meeting followed up with July 27 position letter to Treasury and IRS

MULTIEMPLOYER CONCERNS WITH SECURE 2.0

- Mandatory Roth Catch-Up Contributions
  - Effective January 1, 2024, Workers who earned $145K in the prior year are required to remit their catch-up contributions as pre-tax Roth contributions.
  - Section 603 of Secure 2.0 place Roth requirement on Participants earning $145K or more from the "employer sponsoring the plan."
  - Multiemployer group raised issue that as multiemployer boards of trustees are plan sponsors, multiemployer plans are not subject to Roth requirement.

MULTIEMPLOYER CONCERNS WITH SECURE 2.0

- Automatic Enrollment
  - Beginning in 2025, Secure 2.0 Section 101 requires "new plans" to automatically enroll participants with a minimum wage deferral of 3% of compensation with 1% years escalation up to 10%.
  - Secure 2.0 provides an exception for plans in existence prior to enactment of Secure 2.0.
  - However, the exception does not apply to employers who adopt a "multiple employer plan."
  - Impact on newly organized groups, collective bargaining.

MULTIEMPLOYER CONCERNS WITH SECURE 2.0

- Required Minimum Distributions
  - Prior IRS guidance under the Small Business Job Protection Act ("SBJPA") allowed plans to adopt amendments to distribute RMDs no later than April 1 following the year the participant reached 70½ or retires without incurring an impermissible cutback under Code Section 411.
  - Multiemployer Group seeks guidance from the IRS, similar to the previous guidance issued in 26 C.F.R. section 1.411(d)-4, Q&A 10, that provides anti-cutback relief to plans that do not use the Code's definition of the latest permissible Required Beginning Date if they implement new rules under the SECURE Act and SECURE 2.0

MULTIEMPLOYER CONCERNS WITH SECURE 2.0

- **Overpayments**
  - Section 301 of SECURE 2.0 amends both the Code and ERISA to allow plans to either seek or not seek to recoup inadvertent benefit overpayments subject to several limitations, unless the participant is "culpable" for the overpayment.
  - Questions as to how this provision will impact existing Department of Labor ("DOL") guidance regarding the recoupment of pension benefits paid to a participant who has engaged in prohibited employment.
  - Under the DOL regulation found at 29 CFR § 2530.203-3(b)(3), a plan may deduct from future benefit payments those payments previously made during the months the participant was employed after his or her commencement of retirement benefits."
  - Multiemployer group seeking clarification that continued employment after pension commencement in violation of suspension of benefit rules makes a participant culpable under Section 301, and in accordance with 29 CFR § 2530.203-3(b)(3), the plan may deduct from future benefit payments the pension benefits paid to the participant who engaged in prohibited employment.

SECURE 2.0 – IRS GUIDANCE POST-ENACTMENT

- IRS Notice 2023-62: Mandatory Roth Catch-Up Contributions
  - During "Administrative Transition Period" covering taxable years beginning after December 31, 2023, (1) catch-up contributions will be treated as satisfying the requirements of the Code, even if the contributions are not designated as Roth contributions, and (2) a plan that does not provide for designated Roth contributions will be treated as satisfying the requirements of Code Section 414(v)(7)(B) as amended by SECURE 2.0
  - Service considering further guidance on whether or not to apply the $145K Roth limit on per plan or per employer basis
  - IRS requests comments by October 24, 2023

SECURE 2.0 – IRS GUIDANCE POST-ENACTMENT

- IRS Notice 2023-52: Required Beginning Date
  - Rather than defining the required beginning date by reference to April 1 of the calendar year following the calendar year in which an individual attains reference to April 1 of the calendar year after the calendar year in which the individual attains the ***applicable age*** (which is either age 73 or age 75, depending on the individual's date of birth)

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- What Comes Next
- Watch This Space

SECURE 2.0 FOR MULTIEMPLOYER PLANS

Thank you!