



Rewards Policy Insider 2024-01



In this Issue:

1. [IRS Releases “Grab Bag” Guidance on SECURE 2.0 Issues](#)
2. [Department of Labor Revs Up Fiduciary Rule Efforts in a Bid to Quickly Finalize the Proposal](#)
3. [Illinois Paid Leave for All Workers Act Now in Effect](#)

IRS Releases “Grab Bag” Guidance on SECURE 2.0 Issues

In December, the Internal Revenue Service (“IRS”) released a long-awaited “grab bag” Notice in Q&A form

providing preliminary guidance on several provisions in the SECURE 2.0 Act of 2022 ("SECURE 2.0"). The issues addressed in the new guidance include, among many others, SECURE 2.0's expansion of automatic enrollment in retirement plans and the new increase of the tax credit for small employers starting a retirement plan.

Background

Following the enactment of SECURE 2.0 on December 29, 2022, many stakeholders requested guidance from the IRS and other federal agencies on provisions of the law that were scheduled to go into effect shortly after enactment. After the passage of the SECURE Act of 2019, the IRS released a so-called "grab bag" Notice, which provided preliminary answers on certain key provisions of the law that required immediate guidance from the agency. In 2023, regulators had indicated that they intended to release a similar Notice for SECURE 2.0-related issues.

Grab Bag Guidance

On December 20, 2023, the IRS released [Notice 2024-2](#), providing Q&A guidance on 12 SECURE 2.0 provisions. The Notice indicates that the guidance is not intended to provide comprehensive guidance on SECURE 2.0. Rather, it provides guidance on certain issues to help in commencing implementation of key provisions. The Notice indicates that the IRS intends on issuing additional guidance in the future related to SECURE 2.0.

The guidance provided in Notice 2024-2 covers, among many other provisions:

- **Automatic Enrollment in Retirement Plans.** Section 101 of SECURE 2.0 generally requires new 401(k) and 403(b) plans to include certain automatic enrollment and automatic escalation features in the plan. Certain plans, such as those that were "established" before SECURE 2.0's enactment, are exempt from the new requirements. To clear up uncertainty regarding what it means for a plan to be "established" for purposes of this provision, Notice 2024-2 provides that a qualified 401(k) plan is "established" on the date the plan terms providing for the 401(k) feature were initially adopted, even if the plan terms are effective after the adoption date. The Notice also provides guidance on the circumstances in which merged plans are subject to the new rules.
- **Start-Up Credit.** Effective for taxable years beginning in 2023, section 102 of SECURE 2.0 increases an existing credit which allows small employers to take an annual tax credit for three years up to a percentage of the costs paid or incurred in connection with starting a new retirement plan. Under SECURE 2.0, the credit percentage was increased to 100% of a \$5,000 cap for employers with up to 50 employees. SECURE 2.0 also created a second tax credit equal to a certain percentage of the amount contributed by the employer to the retirement plan for employees with wages below a certain threshold. Notice 2024-2 clarifies that non-FICA wages (e.g., self-employed income) do not count toward the wage threshold for purposes of the employer contribution credit. In addition, the guidance provides that a plan established before the provision's effective date – i.e., taxable years beginning after December 31, 2022 – may be able to use both credits for years after the effective date.
- **Plan Amendments.** Section 501 of SECURE 2.0 provides plans with a remedial amendment period – allowing plans to retroactively adopt any

necessary plan amendments as the result of changes made by the new legislation – through the last day of the first plan year that begins on or after January 1, 2025 (or 2027 for governmental and collectively bargained plans). Section 501 also pushes back the remedial amendment periods to adopt plan amendments that reflect changes made by other recent laws, such as the SECURE Act of 2019. Notice 2024-2 extends SECURE 2.0's amendment deadlines (including for the other laws' deadlines that were extended by SECURE 2.0) until at least the end of 2026.

- **Financial Incentives for Contributions to a Plan.** Section 113 of SECURE 2.0 allows 401(k) and 403(b) plans to provide “de minimis” financial incentives for employees that elect to contribute to the employer’s retirement plan. The Notice specifies that a de minimis financial incentive can be no more than \$250 in value.

Department of Labor Revs Up Fiduciary Rule Efforts in a Bid to Quickly Finalize the Proposal

Following the October release of the highly anticipated proposed update to the regulation providing who qualifies as a fiduciary when providing investment advice, the Department of Labor (“DOL”) has taken efforts in the last months of 2023 to fast-track the proposal, such as holding a hearing on the proposal in December and closing the public comment period shortly after New Year’s Day despite requests for an extension. Many stakeholders believe that DOL intends to finalize the fiduciary rule proposal in the first half of 2024.

Background

On October 31, 2023, DOL released its controversial “retirement security” proposed rule, along with proposed amendments to multiple corresponding Prohibited Transaction Exemptions. The so-called “fiduciary rule” proposal would amend a 1975 regulation that contains a five-part test that must be met in order for a person to be treated as a fiduciary under ERISA by reason of providing investment advice. The 2023 proposal is not the first time that DOL has attempted to change the 1975 regulation to significantly broaden who is considered an investment advice fiduciary. Under the Obama Administration, DOL issued a similar proposal in 2010 – which was abandoned before finalization – and again in 2016. While the 2016 rule was eventually finalized, it was struck down by a circuit court in 2018. (A fuller discussion of the fiduciary rule proposal is provided in [Rewards Policy Insider 2023-23.](#))

DOL Hearing

DOL held a two-day hearing on the fiduciary rule proposal in December 2023, which featured testimony from dozens of witnesses and was attended by several high-ranking DOL officials. At a high level, proponents of the proposed changes to the regulation lauded the proposal as a way to protect everyday investors from the risk of conflicted investment advice. Critics of the proposal generally took the position that the existing regulatory environment already provides sufficient means to protect investors from bad advice provided by investment advisors and urged DOL to withdraw the proposal in order to avoid increasing costs for plans and participants and causing unnecessary disruptions. They also criticized DOL's very short public comment period and the agency's atypical decision to hold a hearing on the proposal during the open comment period (usually, agency hearings on a rule take place well after the close of the comment period).

Outlook

Despite numerous requests to extend the public comment period due to the magnitude of the fiduciary rule proposal, the comment period closed on January 2, 2024 without an extension. It is widely expected that DOL will move more quickly than usual to finalize the proposal in order to avoid a deadline under federal law that, under certain circumstances, allows the 2025 Congress to strike down an agency rule that was finalized within a certain window in 2024. In order to avoid this deadline, DOL would need to finalize the proposal within approximately the first five months of 2024. Whether it is possible for the agency to finalize in such a short time period remains to be seen, as it must review each of the almost 20,000 comments that were submitted on the proposal. DOL will also likely be tied up in legal challenges to the proposal in 2024, as it is widely expected that opponents of the fiduciary rule will sue the agency to invalidate the rule, mirroring the legal challenges to the 2016 fiduciary rule.

Illinois Paid Leave for All Workers Act now in Effect

Effective as of January 1, 2024, the Illinois Paid Leave for All Workers Act requires Illinois employers to allow workers to accrue up to five (5) days of leave from work each year. The leave can be used for any reason.

Updates and enhancements to the City of Chicago's Paid Leave and Paid Sick and Safe Leave ordinance, originally scheduled to take effect on December 31, 2023, have been delayed until July 1, 2024.

Illinois Paid Leave for All Workers Act

Under the new Illinois Paid Leave for All Workers Act, Illinois workers earn 1 hour of paid leave for every 40 hours they work – up to a maximum of 5 days per 12-month period. They can use paid leave for any reason and employers may not require workers to give a reason for taking the time off.

Accruals begin on January 1, 2024, or the first day of employment, if later. Employees must wait 90 days after accruals begin in order to start taking the leave. For example, if an employee begins accruing paid leave on January 1, 2024, the first day they could take that paid time off would be March 31, 2024.

Unused leave can be carried over from one year to the next. However, employers are not required to offer more than 40 hours of paid leave in a year.

Employers that already offer PTO programs that satisfy all of the new Illinois law's minimum requirements do not need to modify the terms of their policies. Future rulemaking is expected to clarify how this exception will work, including which plans are eligible.

Chicago Ordinance Delayed

Enhancements to Chicago's Paid Leave and Paid Sick and Safe Leave ordinance were originally scheduled to take effect just before the Illinois law did, but were delayed until July 1, 2024 to give employers more time to come into compliance.

Under the Chicago ordinance, eligible employees may earn up to 40 hours of paid leave and up to 40 hours of paid sick leave during any 12-month period. While the paid leave can be used for any purpose, the paid sick leave can only be used if the employee or the employee's family member is sick and meets certain other requirements.

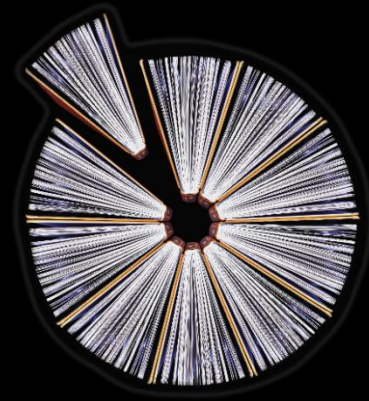
Additional guidance on the amendments to the Chicago ordinance is expected.

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