



Wisconsin Counties Association
ANNUAL CONFERENCE
& Exhibit Hall **2023**

1:00 – 2:00 PM

Secure Act 2.0 – What Comes Next?

Speakers: Keith Mancini, AVP Government Affairs, WI Deferred Compensation Program;
Emily Lockwood, Managing State Director, WI Deferred Compensation Program
Moderator: Jim Brey, County Supervisor, Manitowoc County



SPECIAL LEGISLATIVE UPDATE

SECURE 2.0 Act of 2022

Keith Mancini

AVP Government Affairs

SECURE 2.0



SECURE 2.0

On December 23, 2022, Congress passed the Consolidated Appropriations Act of 2023, and the legislation was signed into law on December 29, 2022.

The final bill included the SECURE 2.0 Act of 2022.

SECURE 2.0 is the culmination of congressional efforts in combining three pension reform bills:

- Securing a Strong Retirement Act – House bill
- Enhancing American Retirement Now (EARN) Act – Senate Finance bill
- Retirement Improvement and Savings Enhancement to Supplement Healthy Investment for the Nest Egg (RISE & SHINE) Act – Senate Health, Education, Labor, and Pensions committee bill

SECURE 2.0 – Administrative provisions

First Day of the Month Rule (Sec 306) – Effective for taxable years beginning after date of enactment

- Under past law, participants in governmental 457(b) plans had to request deferral changes prior to the beginning of the month in which the deferral was made.
- SECURE 2.0 allows for deferral elections made at any time (as in 401(k) and 403(b) plans).
- Non-governmental plans remain subject to the “First Day of the Month” rule.

No notices required to unenrolled participants (Sec 320) – Effective for plan years starting after December 31, 2022

- Employee must have received summary plan description and notice of initial eligibility.
- Annual notice must be provided of right to join and key benefits of plan.
- Applies to both DOL- and IRS-required notices in any individual account plan.

SECURE 2.0 Administrative provisions: Correcting plan errors

Expansion of EPCRS (Sec 305) – Effective December 29, 2022

- Can self-correct any inadvertent error in plan or IRA if completed in a reasonable period of time
- Treasury directed to add preapproved correction methods for IRAs
- Not applicable if discovered on audit with no prior effort to fix or if carved out in IRS guidance
- Loan errors corrected under EPCRS deemed to satisfy the DOL Voluntary Fiduciary Correction Program, although DOL can impose reporting requirements

Recovery of overpayments (Sec. 301) – Effective December 29, 2022

- Plan fiduciaries have discretion regarding whether to seek recoupment of inadvertent overpayments.
- If choose not to recoup, amount of overpayment is generally eligible for rollover, and any forfeitures must be restored.
- If choose to recoup, limitations and restrictions apply to protect participants and beneficiaries.
- Not applicable if overpayment is a result of fiduciary breach or recipient misconduct.

Safe harbor for correction of elective deferral failures in implementing automatic contribution features (Sec. 350) – Effective for errors after December 31, 2023

- Makes permanent IRS guidance due to expire on December 31, 2023, eliminating the need for employers to contribute a percentage of missed salary deferral contributions as part of the error correction if certain conditions are met. Missed matching or other employer contributions and earnings thereon must be paid.

Discretionary plan amendments to increase benefits may be made until employer's tax-filing deadline, with extensions (Sec. 316) – Effective for plan years beginning after December 31, 2023

- Allows more time to correct errors by plan amendment.

SECURE 2.0 – Administrative provisions

Qualified birth or adoption (QBAD) repayments limited to three years from date of distribution (Sec 311) – Effective for QBADs made after date of enactment

- QBADs made prior to date of enactment must be repaid before January 1, 2026.

Self-certification for deemed hardship and unforeseeable emergency distributions (Sec 312) – Effective for plan years starting after date of enactment

Participants can self-certify compliance with both the safe-harbor events and the needs test in a 401(k) or 403(b) plan and for compliance with the unforeseeable emergency test in a 457(b) plan.

- Treasury is authorized to create an exception where the plan administrator has actual knowledge to the contrary.

Increase in cash-out limit (Sec 304) – Effective for distributions made after December 31, 2023

- Limit increased from \$5,000 to \$7,000 – not indexed.
- May require a plan amendment prior to becoming effective

SECURE 2.0 – Administrative provisions

Required minimum distributions (RMDs) beginning age (Sec 107) – Effective January 1, 2023 – January 1, 2033

- The SECURE Act extended the required beginning age from 70½ to 72.
- SECURE 2.0 increases the required beginning age to 73 in 2023 for participants/IRA owners who turn 72 on or after January 1, 2023; RMD age will then remain 73 until December 31, 2032.
- The RMD age will then increase to 75 beginning January 1, 2033.

Note that there is a drafting glitch in the language of SECURE Act 2.0 related to the scheduled 2033 effective date of the increase in the required beginning date to age 75, under which it is unclear whether such increase goes into effect in 2033 or 2034. It appears that the intent of the SECURE 2.0 bill was 2033, and there is a concerted attempt being made for clarification.

In-plan Roth RMD (Sec 325) – Effective taxable years after December 31, 2023

- RMDs are currently not required prior to the death of a Roth IRA owner but are required for plan participants with designated Roth accounts.
- SECURE 2.0 eliminates the pre-death distribution requirement for in-plan Roth accounts for taxable years starting in 2024.
- This change does not apply to distributions required before January 1, 2024.

Other RMD changes (Sec 302) – Effective taxable years after date of enactment

- SECURE 2.0 reduces the penalty for missed RMDs from 50% to 25%. If the missed RMD is corrected within a “correction window,” the tax is reduced further to 10%.

SECURE 2.0 - Administrative provisions

Removing required minimum distribution barriers for life annuities (Sec 201) – Effective for calendar years after date of enactment

- Prior to SECURE 2.0, RMD law for defined contribution plans generally prohibited annuities that gradually increase, and other popular features.
- SECURE 2.0 would generally allow annuities that increase at a rate of less than 5% per year and/or offer commutation and acceleration features, a dividend, and/or a return of premium death benefit.

Eliminating a penalty on partial annuitization (Sec 204) – Effective on date of enactment

- Current law requires required minimum distributions for participant accounts be bifurcated between the portion holding the annuity and the non-annuity. This treatment may result in higher minimum distributions than would be required if the participant did not hold an annuity.
- Under SECURE 2.0, Treasury is directed to issue regulations that would allow the participant to aggregate the annuity and non-annuity portions together for the purposes of determining the required minimum distribution amount.
- Regulation amendments would reflect that all IRAs owned by the participant (or beneficiary of same decedent) are treated as one account.
- All 403(b) contracts a participant holds as an employee are also aggregated.
- Reasonable good faith interpretations are allowed from date of enactment until such time as Treasury issues required regulations.

SECURE 2.0 – Administrative provisions

Clarification of substantially equal periodic payment rule (Sec 323) – Effective for transfers, rollovers, and exchanges after December 31, 2023, and effective for annuity distributions commencing after date of enactment

- Substantially equal periodic payments paid over a participant's lifetime are excluded from the 10% early withdrawal penalty.
- However, if the substantial equal periodic payment is modified, the early withdrawal penalty applies.
- SECURE 2.0 clarifies that a modification does not occur if payments being made from a 401(a), 401(k), 403(a), 403(b), or an IRA (qualified retirement plan) are transferred or rolled over to another qualified retirement plan if the subsequent plan maintained the substantial equal periodic payment.
- SECURE 2.0 also clarifies that amounts received as annuities under the RMD rules are substantially equal periodic payments.

Surviving Spouse Election to be Treated as Employee (Sec. 327) – Effective for calendar years after December 31, 2023

- A surviving spouse may elect to be treated as deceased plan participant or IRA owner for purposes of RMD rules.
- If spouse makes the election and is sole beneficiary, RMDs would be paid out using the uniform lifetime table.
- Additional guidance is necessary regarding how election is made and how RMD rules apply to surviving spouse.

SECURE 2.0 – Administrative provisions

Domestic Abuse Penalty-Free Distribution (Sec 314) – Effective for distributions after December 31, 2023

- Plans may permit a distribution in the amount of the lesser of \$10,000 or 50% of the present value of an employee's nonforfeitable accrued benefit. The distribution would avoid the 10% early withdrawal penalty.
- The distribution is eligible if paid during the one-year period beginning on any date on which the individual is a victim of domestic abuse (domestic abuse can be physical, psychological, sexual, emotional, or economic).
- Self-certification is allowed.
- Distributed amount can be repaid as with qualified birth and adoption provision (within three years as amended by SECURE 2.0).
- Applies to 401(a), 401(k), 403(b), governmental 457(b) plans, IRAs.
 - Distribution option does not apply to defined benefit plans or any other plans that are subject to qualified joint and survivor annuity (QJSA).

Exception to early withdrawal penalty for individuals with terminal illness (Sec 326) – Effective upon enactment

- New exception to the 10% early withdrawal penalty for terminally ill individuals
- Must have certification from a physician
- Terminal illness defined as an illness or physical condition reasonably expected to result in death within 84 months of certification.

SECURE 2.0 – Administrative provisions

Public Safety Officer Exemption from 10% penalty tax (Sec 329) – Effective upon enactment

- Currently, the exemption applies to a distribution from a governmental plan to a public safety officer who is at least age 50.
- Exception from penalty is extended to public safety officers with at least 25 years of service with the employer sponsoring the plan (whichever is earlier).
- Whether plan amendment is required depends upon current document language

Corrections Employee Exemption from 10% early penalty tax (Sec 330) – Effective upon enactment

- Extends the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments.
- These two provisions apply to distributions made after the date of enactment.
- Plan amendment required by end of 2027 plan year as long as plan operates in compliance as of the effective date of adopting the provision.

SECURE 2.0 – Administrative provisions

Access to retirement funds in event of qualified federally declared disasters (Sec 331) – Retroactive effective date

- Applies to qualified plans under 401(a) (including money purchase pension plans), 403(a) plans, 403(b) plans, and governmental 457(b) plans.
- Allows qualified disaster recovery distributions to plan participants and IRA owners affected by federally declared disasters.
- Distributions allowed from the first day of qualified disaster incident period until 179 days after the latter of:
 - The date of enactment.
 - The first incident date.
 - The date the disaster is declared.
- Participant or IRA owner eligible for relief if both the following apply:
 - Their principal home was in the qualified disaster area.
 - They sustained economic loss as a result of the disaster.
- Relief available for disasters that began on or after January 21, 2021.

SECURE 2.0 – Administrative provisions

Access to retirement funds in event of qualified federally declared disasters (Sec 331) – Retroactive effective date (continued)

Allows distributions up to \$22,000 even if not otherwise distributable.

- Distributions would not be subject to 10% early withdrawal penalty.
- Distributions not subject to 20% mandatory withholding.
- Exempt from 402(f) notice requirements.
- May be repaid within three years.
- May be included in income over a period of three years.

Loan relief

- Maximum loan amount increased to lesser of \$100,000 or greater of \$10,000, or 100% of nonforfeitable account balance.

SECURE 2.0 – Administrative provisions

Long-term care contracts purchased with plan distributions (Sec 334) – Effective three years after enactment

- **Would allow, but not require, in-service distributions for the payment of premiums for certified long-term care (LTC) insurance for the participant or spouse.**
- **LTC insurance defined as either of the following:**
 - Providing meaningful financial assistance in the event that the insured needs in-home or nursing home care
 - Include inflation and termination of coverage protection
- **Amount of distribution during a taxable year is the lesser of any of the following:**
 - \$2,500
 - The amount of premiums for the taxable year
 - 10% of the participant's nonforfeitable account balance
- **Distributions are taxable but not subject to 10% early withdrawal penalty or 20% mandatory withholding.**

SECURE 2.0 – Access and savings

Automatic enrollment mandate for new 401(k) and 403(b) plans (Sec 101) – Effective for plan years beginning after December 31, 2024, to any plan established after date of enactment

- Initial automatic enrollment at a rate of at least 3%, not to exceed 10%
- Automatic increase of 1% annually until rate reaches at least 10%, not to exceed 15%
- Exceptions:
 - Plans in existence at date of enactment are not subject to mandate.
 - Small employers (10 or fewer employees) exempted.
 - New employers (three years or less) are exempted.
 - Churches and governmental employers are exempted.

SECURE 2.0 – Access and savings

Optional treatment of student loan payments as elective deferrals for purposes of matching contributions (Sec 110) – Effective for plan years beginning after December 31, 2023

- **Applies to 401(k)s, 403(b)s, governmental 457(b)s, and SIMPLE IRAs.**
- **Plan sponsor may elect, but is not required, to provide matching contributions on qualified student loan payments.**
 - Student loan match must be at the same rate as “regular” matching contributions.
 - Student loan match must be subject to same vesting schedule as regular match.
 - Employee must be otherwise eligible to receive matching contributions.
 - All employees eligible to receive regular matching contributions must be eligible for student loan payment match.
 - 457(b) plan sponsors can make matching contributions to 401(a) and 403(b) plans that they also sponsor.
- **Student loan payments eligible for match may not exceed current elective deferral limit reduced by any elective deferrals made by employee.**
- **Broad definition of qualified student loan payment:**
 - Payments are on loans incurred to pay higher education expenses.
 - Employee certifies amount of loan payments annually.
 - Employer may rely on employee certification.
- **Student loan payments are not treated as elective deferrals for testing purposes.**
- **For ADP testing purposes, plan sponsor may test employees receiving student loan match separately.**

SECURE 2.0 – Access and savings

Saver's credit (Sections 103 & 104) – Effective for taxable years beginning in 2027

Under prior law, individuals below certain income levels receive a non-refundable tax credit based on contributions to a retirement savings account.

SECURE 2.0 makes the saver's credit a federal matching contribution.

- Up to a 50% match will be made on first \$2,000 contributed to a 401(k), 403(b), governmental 457(b), or an IRA. Maximum match is \$1,000; minimum is \$100.
- Match is treated as a pretax contribution and must be directed to a plan or traditional IRA.
- Match is not included for testing or any contribution limits.

Income eligibility levels:

- Joint filers – Full match available up to \$41,000 MAGI. Phases out over next \$30,000 of income, with no match available at \$71,000.
- Single filers and married filing separate – Available up to \$20,500 MAGI. Phases out over next \$15,000, with no match at \$35,500.
- Head of household – Available up to \$30,750 MAGI. Phases out over next \$22,500, with no match at \$53,250.
- Income levels are indexed.

Restrictions on match:

- Match may be reduced by amounts of distribution from retirement account.
- If distributions from account exceed certain levels, individual may be taxed on some portion of match.

SECURE 2.0 – Access and savings

Emergency savings (Sections 115 & 127) – Effective for plan years/distributions after December 31, 2023

In-service emergency savings withdrawal option for 401(k), 403(b), and governmental 457(b) (optional, not required)

- May withdraw up to \$1,000, not subject to early withdrawal penalty.
- Distribution may be repaid within three years.
- One distribution is allowed per year (subject to three-year rule below).
- If account is not “rebuilt” — either through repayment of prior distribution or making contributions equal to distribution — no additional distributions are available for three years.
- Effective for distributions after December 31, 2023.

Plan-linked emergency savings account (PLESA) (optional, not required)

- **Employers may, but are not required, to establish a PLESA allowing certain participants to make emergency savings contributions to a plan.**
- **Contributions:**
 - Participant may make contributions to the PLESA until the account balance reaches \$2,500.
 - Contributions will be treated as Roth contributions.
 - Employer may automatically enroll participants in PLESA at level not to exceed 3%.
 - Highly compensated employees may not participate in PLESA.
 - Contributions must be invested in principal preservation investments.

SECURE 2.0 – Access and savings

Plan-linked emergency savings account (PLESA) (continued)

PLESA contributions that are eligible for employer match:

- Must be matched at same rate as elective deferrals.
- Employer not required to suspend match upon withdrawal. Treasury to issue regulations preventing abuse of matching contributions.

If contributions would cause account balance to exceed \$2,500:

- If the plan has a Roth source, excess contributions may be deemed a Roth contribution.
- If plan does not have a Roth source, excess contributions will not be accepted.

Distributions:

- Participant must be able to take emergency savings distributions at least once per month.
- First four distributions in any plan year may not be subject to any fees or charges. Subsequent withdrawals may be charged reasonable fees.
- Distributions are not subject to early withdrawal penalties.
- Distributions are treated as qualified distributions and are not taxable.

Upon termination of employment or plan sponsor's termination of PLESA, account balance may be:

- Rolled to a Roth source if plan allows.
- Rolled to a Roth IRA.
- Distributed to participant.

SECURE 2.0 – Access and savings

Increase in catch-up contribution limits (Sec 109) – Effective for taxable years beginning after December 31, 2024

- Individuals ages 60–63 may make additional catch-up contributions above current \$7,500 (plans) or \$3,500 (SIMPLE).
 - Plan contributions increase to greater of \$10,000 (indexed) or 150% of catch-up limit.
Example: Current limit is \$7,500; 150% equals \$11,250.
 - SIMPLE contributions increase to greater of \$5,000 (indexed) or 150% of catch-up limit.
Example: Current limit is \$3,500; 150% equals \$5,250.

SECURE 2.0 – Revenue raisers

Catch-up contributions in form of Roth (Sec 603) – Effective for taxable years beginning after December 31, 2023

- All qualified plan catch-up contributions for individuals with FICA wages in excess of \$145,000 (indexed) for the prior year must be made in the form of Roth contributions.
- Plans must have a Roth source if they wish to allow catch-up contributions.

Optional treatment of certain employer contributions as Roth contributions (Sec 604) – Effective upon enactment

- Plans may, but are not required to, permit participants to elect to have matching and nonelective contributions treated as Roth contributions.

Hardship withdrawal rules for 403(b) plans (Sec 602) – Effective for plan years after December 31, 2023

- SECURE 2.0 conforms 403(b) hardship rules to 401(k) plans so hardships can be taken from same sources (deferrals; nonelective contributions; matching contributions; earnings on eligible contributions).

IRS Notice 2023-62

The IRS issued Notice 2023-62 on August 25, 2023 providing guidance on Section 603 of SECURE 2.0

- Provides an administrative transition period until January 1, 2026.
 - Pre-tax catch-up contributions prior to 2026 made will be treated as satisfying the Roth catch-up mandate.
 - Plans without a Roth source will be treated as meeting the Roth catch-up requirement.

Pending guidance

- Section 603 would not apply in the case of a participant that does not have FICA wages (Partners, self-employed-individuals, or state or local government employees whose services are excluded from the definition of FICA wages)
- Plan may treat an election to make a pre-tax catch-up contributions as an election to make Roth contributions.
- Plan that is maintained by more than one employer (MEPs, PEPs) would not aggregate wages from an unrelated participating employer for \$145,000 limit. Silent on treatment of related employers.

Request for comments on whether plans may limit catch-up to participants making \$145,000 or less.

Secure 2.0 – Plan amendments

Section 501

- Plan amendments for SECURE 2.0, the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Relief Act of 2020 must be made by the end of the 2025 plan year or, in the case of governmental or collectively bargained plans, by the end of the 2027 plan year.
- Plans must operate in accordance with the requirements of the terms of these laws as of the applicable effective dates.
- Relief is also provided from application of the anti-cutback rule.

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**Thank
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