Legal Update Article

The Good, the Bad and the Ugly in Secure 2.0: A Primer for Retail Employees

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Attracting and retaining the right people is a critical issue for many retailers, and the 2022 federal retirement plan reform (SECURE 2.0) can help.

SECURE 2.0 requires employers to enroll long-term, part-time workers in their 401(k) plan if they work at least 500 hours per year for at least two consecutive years and are 21 years old or older. Retailers were already facing challenges under the original SECURE Act when it was introduced with a three-year minimum service requirement.

Tracking part-time employee hours over years is a significant administrative burden in an industry where turnover is high, and employees leave and return frequently.

But SECURE 2.0 is not all bad news for retailers. A retail employer can take advantage of the following new provisions in the law to make their benefits package more attractive to prospective and existing employees:

- **Pay Down Student Debt *and* Get an Employer Match.** Student loan repayment obligations often limit an employee's ability to contribute to a 401(k) plan. By not contributing, employees with student loans may be missing out on employer-matching contributions. Beginning January 1, 2024, employers may treat employees' "qualifying student loan payments" as elective deferrals or after-tax contributions for purposes of making matching contributions. Thus, employees with student loans can repay their student loans and still get employer-matching contributions under the 401(k) plan. To simplify administration and encourage employers to offer this benefit, employers are not required to secure documentation that the payments were used to repay student loans; employee certification is sufficient under the law. Certain nondiscrimination testing relief also applies.
- **Easy Access for Emergencies.** Many employees who are beginning their careers avoid contributing to the 401(k) plan for fear that they may need to access their money in case of an emergency. They may be aware that the Internal Revenue Code places significant restrictions on early withdrawals and may subject those withdrawals to a 10 percent excise tax. Under SECURE 2.0, effective January 1, 2024, plans may permit participants to withdraw up to $1,000 per year for unforeseeable or immediate financial needs related to personal or family emergency expenses without incurring a 10 percent penalty tax. The employee can repay the withdrawn amount within three years of the distribution.
- **Rainy Day Funds.** On a similar note, 401(k) plans may add short-term "emergency savings accounts" (ESAs) to their plans. ESAs must be funded with post-tax Roth contributions, and participants may be automatically enrolled at a rate of up to three percent (3%) of compensation. Contributions are capped at $2,500 (indexed for inflation) or a lower amount determined by the sponsor, and there cannot be a minimum contribution or balance requirements. Participants must be allowed to take at least one withdrawal per month, and the first four withdrawals in a year cannot be subject to fees. ESAs may be invested in "safe investments," such as cash, interest-bearing deposit accounts and principal preservation accounts.

By adopting some of these optional features to their 401(k) plans, retailers may find attracting and retaining talent just a little bit easier.

Please contact a Jackson Lewis attorney with any questions.