SECURE 2.0

SECURE 2.0 Requires New Plans to Contain Automatic Enrollment Feature

Credible studies have concluded that employers who automatically enroll plan participants into a retirement plan help place them on a lifetime path to meaningful savings. Because auto-enrollment is so effective, Congress has included in the SECURE 2.0 Act a provision that requires most newly established 401(k) and 403(b) plans to include such a feature, starting in the 2025 plan year.

Auto-Enrollment Applies to Plans Established on or After December 29, 2022

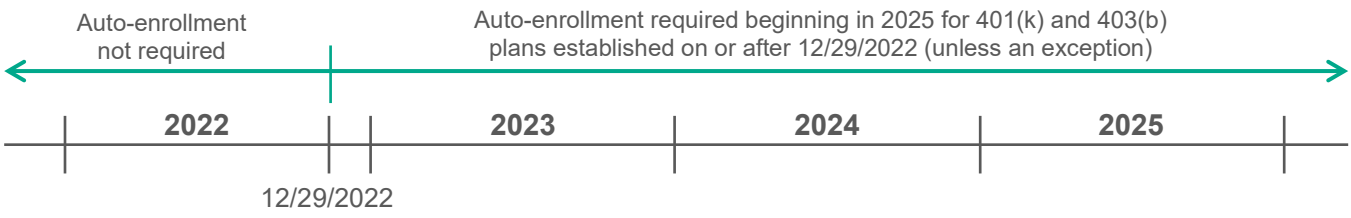
Most employers that establish 401(k) and 403(b) plans on or after December 29, 2022, must include an eligible automatic contribution arrangement beginning in the 2025 plan year; but, plans established before this date are not subject to this requirement and are known as "pre-enactment plans".

When determining whether a 401(k) plan is a pre-enactment plan, employers must determine when the plan was established. Notice 2024-02 clarifies that a plan is established when the plan provision for elective deferrals is initially adopted, even if the effective date is later. For example, if a plan that includes elective deferrals is adopted on October 2, 2022, and has a January 1, 2023, effective date, the plan is a pre-enactment plan because the elective deferral portion of the plan was established on October 2, 2022 (that is, before December 29, 2022). Determining if a 403(b) plan is considered a pre-enactment plan is much easier. If the 403(b) plan was established before December 29, 2022, it is considered a pre-enactment plan without regard to the date that the plan's salary reduction agreement provision was adopted.

Some employers and plan types are exempt from this requirement

- Small businesses—that normally employ 10 or fewer employees
- New businesses—those in existence for less than three years
- SIMPLE 401(k) plans
- Church plans and governmental plans

Each employer in a multiple employer plan (MEP) or pooled employer plan (PEP) is considered separately when determining whether the plan is exempt. For example, an employer that establishes a plan by joining a MEP or PEP on or after December 29, 2022, is subject to the auto-enrollment rule even if the MEP or PEP was established before that date.



Plans Involved In a Merger or Acquisition

Before merging plans, employers will need to review the classification of each plan to determine if the ongoing plan is considered a pre-enactment plan.

If two pre-enactment single-employer plans or a pre-enactment single-employer plan and a pre-enactment plan maintained by more than one employer are merged, the ongoing plan is treated as a pre-enactment plan.

Pre-Enactment Plan + **Pre-Enactment Plan** = **Ongoing plan treated as pre-enactment plan**

If a merger involves one pre-enactment plan and another that is not, the surviving plan generally will not retain the pre-enactment classification.

Pre-Enactment Plan + **Post-Enactment Plan** = **Ongoing plan treated as post-enactment plan, with 2 exceptions**

Exception 1

In a merger of two single employer plans in connection with certain corporate acquisitions and dispositions, if the pre-enactment plan is designated as the ongoing plan, it will retain its pre-enactment status if the merger is completed by the end of the IRC Sec. 410(b)(6)(C) transition period.

Exception 2

When a single-employer plan that is not considered a pre-enactment plan is merged with a pre-enactment plan maintained by more than one employer, the ongoing plan is not treated as a pre-enactment plan with respect to that single employer, but the merger will not affect the pre-enactment status for the other employers participating in the ongoing plan.

Plans Involved in Spinout

If a single employer plan is spun off from a single employer pre-enactment plan, the spinoff plan will retain pre-enactment status. If a plan is spun off of a plan maintained by more than one employer that was considered a pre-enactment plan, the spinoff plan will be treated as a pre-enactment plan only if the plan maintained by more than one employer was a pre-enactment plan with respect to the employer sponsoring the spun-off plan.

Auto-Enrollment Features

Beginning with the 2025 plan year, an automatic-enrollment component must contain the following features.

- An eligible automatic contribution arrangement (EACA)—which must allow permissible withdrawals
- An initial auto-enrollment rate of at least 3%, but not more than 10%, which must increase by 1% on the first day of each plan year until reaching at least 10%, but not more than 15% (10% for non-safe harbor plans until the 2025 plan year)
- Absent a participant's investment election, assets must be placed in a qualified default investment alternative (QDIA) to preserve principal
- Employers must allow participants to elect to defer at a higher or lower percentage than is required by the auto-enrollment rules—or elect not to defer at all

The automatic-enrollment provision has proven its value for years. In 2025, it will be required of most employers who establish a 401(k) or 403(b) plan on or after December 29, 2022. Consequently, it might make sense to get on board now.