

LEGAL UPDATES

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## Services

Employee Benefits &  
Executive  
Compensation

Retirement, Health,  
& Welfare Plans

## Professionals

DAVID W. ECKHARDT  
MILWAUKEE:  
414.978.5414  
DAVID.ECKHARDT@  
HUSCHBLACKWELL.COM

CRAIG A. KOVARIK  
KANSAS CITY:  
816.983.8249  
CRAIG.KOVARIK@  
HUSCHBLACKWELL.COM

# Required Retirement Plan Amendments & Pre-Approved Plan Restatements: Action Required by December 31

*Every qualified retirement plan must be formally amended by December 31, 2026, and pre-approved plans must complete a full restatement in the current IRS cycle. Missing either deadline can jeopardize the plan's tax-qualified status.*

## At a Glance

Two critical deadlines are converging. Calendar year plans must adopt amendments reflecting the SECURE Act, CARES Act, and SECURE 2.0 by December 31, 2026 (with later deadlines for collectively bargained and governmental plans), and must complete pre-approved plan restatements within the current IRS cycle (anticipated to be July 2026–2028). Missing either deadline will create significant compliance issues and could trigger immediate and significant tax consequences for both the employer and plan participants and create.

**Husch Blackwell offers fixed-fee service packages for both obligations, with attorney oversight and a structured questionnaire to identify applicable provisions.**

## Overview

The SECURE 2.0 Act of 2022 made sweeping changes to retirement plan rules, building on the original SECURE Act of 2019. Under IRS Notice 2024-02, the December 31, 2026 amendment deadline also covers required amendments under the CARES Act, the Miners Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020. Employers sponsoring 401(k), 403(b), SIMPLE IRA,

and other qualified plans face a critical two-part compliance obligation: (1) adopting formal plan amendments to incorporate all required and elective provisions under these statutes by the applicable deadline, and (2) restating pre-approved plan documents during the current IRS-mandated restatement cycle.

Failure to timely adopt required amendments or restate plans can result in immediate and severe tax consequences and potential disqualification of the plan. Proactive compliance planning is essential.

The amendment deadline depends on the plan type:

<b>Plan Type</b>	<b>Amendment Deadline for Calendar Year Plans</b>
Most qualified plans (non-governmental, non-collectively bargained)	December 31, 2026
Non-governmental 403(b) plans	December 31, 2026
Collectively bargained (Taft-Hartley) plans	December 31, 2028
Governmental plans (IRC § 414(d))	December 31, 2029
403(b) plans maintained by public schools	December 31, 2029

## **Part I: SECURE and SECURE 2.0 Plan Amendments**

### ***Mandatory Provisions***

The following SECURE and SECURE 2.0 provisions are mandatory and require plan amendment:

**RMD Age Increase.** SECURE 2.0 raises the RMD beginning date to age 73 (effective 2023) and age 75 (effective 2033). Plan documents must reflect the applicable age thresholds.

**Roth Catch-Up Contributions.** For taxable years beginning after December 31, 2025, employees with prior-year FICA wages exceeding \$145,000 (indexed; \$150,000 for 2025 wages applicable in 2026) must make catch-up contributions on a Roth basis. Plans permitting catch-up contributions must be amended accordingly. Plans that do not currently offer Roth contributions may need to add a

Roth feature to continue permitting catch-up contributions for affected participants. Plan sponsors may also use a “deemed Roth” catch-up election, under which an affected participant’s pre-tax catch-up election is automatically treated as a Roth election unless the participant affirmatively opts out.

**Elimination of RMDs for Roth Accounts in Employer Plans.** Roth accounts in 401(k) and 403(b) plans are no longer subject to RMDs during the participant's lifetime, effective 2024.

**Domestic Abuse Withdrawals.** Plans must permit participants who self-certify as victims of domestic abuse to take penalty-free distributions of up to the lesser of \$10,000 or 50% of the vested account balance, effective January 1, 2024.

**Long-Term Part-Time Employee Eligibility.** Effective for plan years beginning after December 31, 2024, employees with 500+ hours of service in two consecutive years must be eligible to participate (reduced from three years).

**Mandatory Automatic Enrollment (New Plans).** New 401(k) plans established after December 29, 2022 must include automatic enrollment features with a minimum default deferral rate.

**Hardship Withdrawal Self-Certification.** Effective January 1, 2024, participants may self-certify hardship eligibility. The plan administrator may rely on such certification, absent actual knowledge to the contrary.

**Surviving Spouse RMD Election.** Surviving spouses who are sole beneficiaries of a defined contribution plan may elect to be treated as the deceased employee for purposes of RMDs, enabling delayed distributions and use of longer life expectancy tables. Plans must be amended to reflect how this election will be administered (e.g., as a default election or requiring affirmative action by the surviving spouse).

**Overpayment Recovery Relief.** Plan fiduciaries now have discretion—rather than a mandatory obligation—to recover inadvertent benefit overpayments from participants. Plans seeking recoupment must comply with new protections, including a prohibition on recovering overpayments more than three years old (absent fraud), restrictions on interest and attorneys’ fees, and annual installment caps of 10% of the overpayment amount.

### ***Key Optional Provisions***

Employers may also elect to adopt several valuable optional features introduced by SECURE 2.0, including:

**Student Loan Payment Matching.** Employers may treat qualifying student loan payments as elective deferrals for purposes of matching contributions.

**Emergency Expense Distributions.** Plans may permit one penalty-free withdrawal per year of up to \$1,000 for unforeseeable personal or family emergency expenses.

**Pension-Linked Emergency Savings Accounts (PLESAs).** Plans may allow non-HCEs to contribute up to \$2,500 on a Roth basis to a linked emergency savings account.

**SIMPLE and SEP Roth Contributions.** Employers sponsoring SIMPLE IRA or SEP IRA plans may now permit Roth contribution elections.

**Increased Catch-Up Contributions for Ages 60–63.** Effective January 1, 2025, participants aged 60–63 may make enhanced catch-up contributions of the greater of \$10,000 or 150% of the regular catch-up limit (resulting in a limit of \$11,250 for 2026), indexed for inflation.

**Increased Involuntary Cash-Out Limit.** Plans may increase the involuntary cash-out threshold for small account balances of terminated participants from \$5,000 to \$7,000, permitting tax-free rollover distributions without participant consent.

**Roth Employer Contributions.** Plans may permit participants to designate employer matching and nonelective contributions as Roth contributions, provided such contributions are fully vested at all times.

**Terminally Ill Individual Distributions.** Plans may permit penalty-free distributions to participants who are terminally ill, subject to certification by a physician that the individual has a condition that is reasonably expected to result in death within 84 months.

**Qualified Disaster Recovery Distributions.** Plans may permit distributions of up to \$22,000 to participants affected by federally declared disasters, with the option to repay such distributions within three years.

### ***CARES Act and Prior Legislation Cleanup***

Plans that implemented provisions under the CARES Act or related legislation must adopt conforming plan amendments by the applicable deadline if not previously done. Key provisions requiring formal documentation include:

**Coronavirus-Related Distributions.** Plans that permitted special distributions or in-service withdrawal changes under the CARES Act must adopt conforming plan language.

**CARES Act Loan Relief.** Plans that permitted higher loan limits and/or suspended or extended loan repayment periods for qualified individuals must adopt plan amendments.

**2020 RMD Waiver.** Plans that implemented procedures to suspend scheduled distributions or offer rollover options for the 2020 calendar year must adopt conforming plan language.

## **Part II: Pre-Approved Plan Restatements**

Employers using pre-approved plan documents (formerly known as volume submitter and prototype documents) must restate their plan documents periodically to incorporate regulatory and statutory changes. The current restatement cycle for defined contribution plans (including 401(k) plans) is expected to run from July 2026 through July 2028.

Restatement is more than a formality. It presents a critical opportunity—and obligation—for employers to ensure that their restated plan document accurately reflects (i) the actual plan design and operational practices in effect, (ii) any design changes adopted during the prior plan cycle, and (iii) all newly required statutory provisions including SECURE, SECURE 2.0, and associated regulatory guidance.

Key restatement considerations include:

Reviewing the prior plan document and any interim amendments to identify all current provisions.

Comparing prior elections to newly issued adoption agreement questions to confirm continuity or document intentional changes.

Ensuring all SECURE 2.0 and other mandatory law changes are incorporated into the restated document.

Identifying any operational practices that differ from the written plan and correcting the document or operations accordingly.

Retaining a signed, executed copy of the restated plan document and all amendments.

## **Immediate Action Steps**

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1. Contact your benefits counsel to assess which SECURE 2.0 and other law provisions apply to your plan.
2. Determine which optional provisions your organization wishes to adopt and communicate those elections.
3. Begin the restatement review by gathering prior plan documents, amendments, and prior questionnaire responses.
4. Establish a timeline for amendment execution and restatement completion well in advance of the December 31, 2026 deadline.
5. Update participant communications, including the summary plan description, 401(k) safe harbor notices, automatic enrollment notices, and fee disclosures, to reflect all adopted amendments.

### **How Husch Blackwell Can Help**

Husch Blackwell's Employee Benefits & Executive Compensation team offers two fixed-fee service modules designed to address both obligations efficiently and transparently:

**Module 1—Plan Restatement Review:** Comprehensive attorney review of your prior plan document, interim amendments, and newly restated draft document, with a written analysis identifying discrepancies and recommended corrective actions.

#### **Module 2—SECURE 2.0 Plan Amendment:**

**Individually Designed Plans:** Complete attorney-drafted amendment covering all applicable mandatory and optional provisions, based on a plan-specific questionnaire, with a summary of changes for plan administrators.

**Pre-Approved Plans:** Comprehensive attorney review of your draft amendment, a questionnaire and legal analysis of whether certain provisions apply, and written analysis identifying discrepancies and recommended corrective actions.

### **Contact Us**

Contact David Eckhardt, Craig Kovarik, your Husch Blackwell benefits counsel or any member of our Employee Benefits & Executive Compensation team for a no-obligation consultation and fee quote.