

# Catch-Up Contributions: IRS Provides Relief from Roth Requirements of SECURE 2.0

by Kimberly S. Couch on August 30, 2023

On August 25, 2023, the IRS issued [IRS Notice 2023-62](#), providing much needed relief for employers who have been struggling to implement [Section 603 of the SECURE 2.0 Act of 2022](#) (“SECURE 2.0”), which requires high income employees to make all catch-up contributions to 401(k), 403(b), or governmental 457(b) plans on an after-tax “Roth” basis. The new requirement was to be effective for taxable years beginning after December 31, 2023, leaving employers scrambling to implement after-tax Roth contributions (if their plans do not already include this feature) and payroll system changes by the end of the 2023 taxable year. Notice 2023-62 delays compliance with the new Roth catch-up contribution mandate for two years. For taxable years beginning before January 1, 2026, all 401(k), 403(b), or governmental 457(b) plan participants age 50 or older may make catch-up contributions on a pre-tax basis, regardless of income.

## Employee Contribution Rules Before SECURE 2.0

A 401(k) plan, 403(b) plan, or governmental 457(b) plan may allow employees to make plan contributions subject to annual limits set each year by the IRS.<sup>1</sup> For 2023, the annual limit on regular employee contributions is \$22,500, adjusted for cost-of-living increases for future years. A plan may permit employees to make contributions on a pre-tax basis, an after-tax Roth basis, or a combination of both. Employees are taxed on pre-tax deferrals and investment earnings when they are distributed to the employee from the plan. In contrast, distributions of Roth contributions, including investment earnings (if certain requirements are met), are tax-free to plan participants.

A 401(k), 403(b) plan, or governmental 457(b) plan may permit participants who would be age 50 or older by the end of a taxable year to make additional “catch-up contributions” for such year, without regard to otherwise applicable IRS or plan-imposed limits. The limit on catch-up contributions for 2023 is \$7,500. The limit applies to both pre-tax and Roth contributions and may be adjusted for cost-of-living increases for future years.

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<sup>1</sup> The limit on annual employee deferral contributions is in 402(g)(1) of the Internal Revenue Code of 1986, as amended (“Code”). In addition, there are annual limits on annual additions (all contributions plus forfeitures) allocated to a participant’s account in a 401(k) plan or 403(b) plan under Section 415 of the Code. See [IRS Notice 2022-55](#) for the limits in effect for 2023.

If an employee contributes pre-tax or Roth regular or catch-up contributions to more than one plan, the contributions are aggregated for purposes of the regular and catch-up contribution limits, even if the plans are maintained by unrelated employers.

Prior to the enactment of SECURE 2.0, an employer had discretion to design its 401(k), 403(b), or governmental 457(b) plan to allow employee regular and catch-up contributions on a pre-tax basis only or on a pre-tax basis and Roth basis. (In order to allow employee regular and catch-up contributions on a Roth basis, a plan must also offer these contributions on a pre-tax basis.)

### **Changes to Employee Contribution Rules under Secure 2.0**

SECURE 2.0 made significant changes to catch up contributions under 401(k), 403(b), and governmental 457(b) plans. One of these changes mandated Roth catch-up contributions for high paid employees. Specifically, beginning in 2024, employees with annual FICA wages over \$145,000 in the prior calendar year may no longer make catch-up contributions to a 401(k), 403(b), or governmental 457(b) plan **on a pre-tax basis**. Instead, these high paid employees must make all catch-up contributions **on an after-tax Roth basis**. The \$145,000 threshold will be indexed for inflation in future years.

### **Administrative Problems Created by SECURE 2.0**

Most 401(k) plans, 403(b) plans, and governmental 457(b) plans permit catch-up contributions. However, not all plans provide for Roth contributions. No plan sponsors or recordkeepers maintained systems to identify employees whose FICA wages for a calendar year exceed \$145,000 and automatically designate their catch-up contributions for the next year as Roth contributions. Due to the early effective date of Section 603 of SECURE 2.0 (taxable years beginning after December 31, 2023), plans sponsors needed to choose between (i) eliminating catch-up contributions for *all* catch-up eligible participants or (ii) implementing payroll system changes to identify employees whose FICA wages exceed \$145,000 for a calendar year and have their catch-up contributions for the next year made as Roth contributions. The choice needed to be made, and communicated to recordkeepers and employees, before the end of the 2023 taxable year to be implemented for the 2024 taxable year.

### **Relief Provided by IRS Notice 2023-62**

IRS Notice 2023-62 provides a two-year administrative transition period for employers to comply with the new Roth mandate for catch-up contributions made by high income employees. As a result of the relief provided in the Notice, an employer is not required to (1) offer Roth contributions under its retirement plan in order for the plan to maintain a catch-up contributions provision or (2) track and require employees whose prior year FICA wages exceed \$145,000 to make their catch-up contributions on a Roth basis until

taxable years beginning after December 31, 2025. The two-year transition period also provides the IRS with additional time to issue guidance on how to implement the new rule. The IRS anticipates that guidance will:

- clarify that the new Roth mandate does not apply to catch-up eligible participants who are not subject to FICA tax withholding in the preceding calendar year, including partners and other self-employed individuals, and certain state and local government employees;
- provide that employers may treat a participant's election to make catch-up contributions on a pre-tax basis as an election to make catch-up contributions on an after-tax Roth basis as necessary to satisfy the new Roth mandate; and
- clarify that, for plans maintained by more than one employer (including multiemployer plans), an employee's wages for a preceding calendar year from one participating employer will not be aggregated with the employee's wages from another participating employer for purposes of the \$145,000 threshold. The Notice provides two examples. If a plan participant receives wages in the amount of \$100,000 from one participating employer and \$125,000 from another participating employer for a calendar year, the participant's catch-up contributions for the following year will not be subject to the new Roth mandate. In addition, if the employee receives over \$145,000 from one participating employer for a calendar year, the catch-up contributions made on behalf of the employee to the plan by another participating employer for the following year will not be subject to the Roth mandate (unless the employee's wages from that other participating employer for the preceding calendar year also exceed \$145,000).

Should you have any questions regarding IRS Notice 2023-62, please contact a member of our [Employee Benefits & Executive Compensation Group](#).



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