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EMPLOYEE BENEFITS LAW INFORMATION MEMO

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Year-End Amendment Deadline for Code Section 457(b) Plans of Non-Governmental Tax-Exempt Employers

A tax-exempt employer that maintains a deferred compensation plan under Section 457(b) of the Internal Revenue Code may need to take immediate action to ensure that the plan is amended by Dec. 31, 2022 to incorporate certain legal changes enacted by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). Among other things, the SECURE Act increased the required beginning date for minimum required distribution from age 70½ to age 72 and changed the rules regarding required distributions to the beneficiaries of deceased participants. The revised rules are applicable to Section 457(b) plans.

As explained in our [Nov. 16, 2022 article](#), the deadline by which sponsors of tax-favored plans are required to adopt the SECURE Act changes (as well as changes made by other recent legislation) was extended from Dec. 31, 2022 to Dec. 31, 2025. While this extension applied to qualified retirement plans, Section 403(b) plans, and Section 457(b) plans maintained by governmental employers, the extension did not apply to Section 457(b) plans of private tax-exempt employers. It is unclear why the IRS did not provide for the extension of the deadline for Section 457(b) plans of private tax-exempt employers. **However, based on the current guidance, Section 457(b) plans of non-governmental tax-exempt employers may need to be amended to reflect the SECURE Act changes by Dec. 31, 2022.**

A tax-exempt employer maintaining a Section 457(b) plan should immediately contact the provider of the plan document to determine if an amendment is required and, if so, if the provider will furnish the necessary amendment. If the provider cannot provide the amendment, a sample “snap-on” amendment that may be used to comply with the SECURE Act amendment requirement can be found [here](#).

If you have any questions about the amendment requirement or the sample “snap-on” amendment, please contact any attorney in our [employee benefits and executive compensation practice](#), or the Bond attorney with whom you are in regular contact.



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