

Hess & Hess, LLP

Quarterly Tax Newsletter

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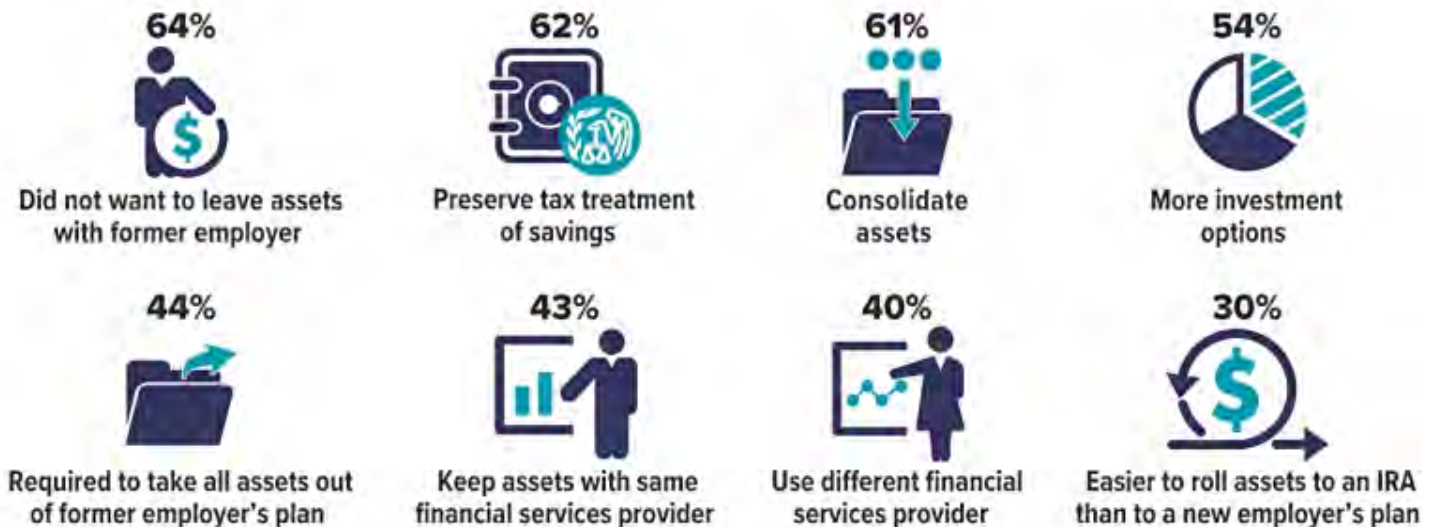
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Reasons to Roll

When you leave your job or retire, you have an opportunity to manage your funds in an employer-sponsored retirement plan such as a 401(k), 403(b), or government 457(b) plan. Depending on the situation, you generally have four options.* The approach that typically gives you the most control over the funds is to transfer some or all of the assets to an IRA through a rollover.

Three out of five households who owned traditional IRAs in 2022 had executed at least one IRA rollover from an employer-sponsored retirement plan. These were the top reasons for the most recent rollover.



*Other options may include leaving assets in the former employer's plan, transferring assets to a new employer-sponsored plan, or withdrawing the money.

Source: Investment Company Institute, 2023 (multiple responses allowed)

SECURE 2.0 Act Expands Early Withdrawal Exceptions

Tax-advantaged retirement accounts such as 401(k) plans and IRAs are intended to promote long-term retirement savings and thus offer preferential tax treatment in return for a commitment to keep savings in the account until at least age 59½. Withdrawals before that age may be subject to a 10% federal income tax penalty on top of ordinary income tax. However, there is a long list of exceptions to this penalty, including several new ones added by the SECURE 2.0 Act of 2022.

Before considering these exceptions, keep in mind that the greatest penalty for early withdrawal from retirement savings could be the loss of future earnings on those savings (see chart). Even so, there are times when tapping retirement savings might be necessary.

Some employer plans allow loans that may be a better solution than an early withdrawal. If a loan or other resources are not available, these exceptions could help. They apply to both employer-sponsored plans and IRAs unless otherwise indicated.

New Exceptions

The SECURE 2.0 Act added the following exceptions to the 10% early withdrawal penalty. Withdrawals covered by these exceptions can be repaid within three years. If the repayment is made after the year of the distribution, an amended return would have to be filed to obtain a refund of any taxes paid.

- **Disaster relief** — up to \$22,000 for expenses related to a federally declared disaster; distributions can be included in gross income equally over three years (effective for disasters on or after January 26, 2021)
- **Terminal illness** — defined as a condition that will cause death within seven years as certified by a physician (effective 2023)
- **Emergency expenses** — one distribution of up to \$1,000 per calendar year for personal or family emergency expenses; no further emergency distributions allowed during three-year repayment period unless funds are repaid or new contributions are at least equal to the withdrawal (effective 2024)
- **Domestic abuse** — the lesser of \$10,000 (indexed for inflation) or 50% of the account value for an account holder who certifies that he or she has been the victim of domestic abuse during the preceding one-year period (effective 2024)

Exceptions Already in Place

These exceptions to the 10% early withdrawal penalty were in effect prior to the SECURE 2.0 Act. They cannot be repaid unless indicated.

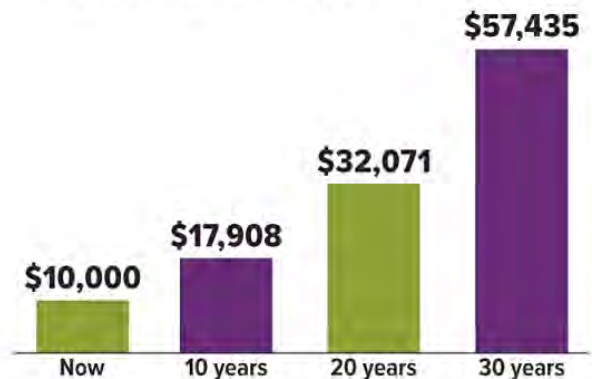
- Death or permanent disability of the account owner
- A series of substantially equal periodic payments for the life of the account holder or the joint lives of the account holder and designated beneficiary

- Unreimbursed medical expenses that exceed 7.5% of adjusted gross income
- Up to \$5,000 for expenses related to the birth or adoption of a child; can be repaid within three years
- Distributions taken by an account holder on active military reserve duty; can be repaid up to two years after end of active duty
- Distributions due to an IRS levy on the account
- (IRA only) Up to \$10,000 lifetime for a first-time homebuyer to buy, build, or improve a home
- (IRA only) Health insurance premiums if unemployed
- (IRA only) Qualified higher education expenses

Lost Opportunity

An early retirement plan withdrawal could end up costing more than you might imagine, even without the 10% penalty. Income taxes will reduce the present value of the withdrawal, and you will lose the potential long-term growth on the amount withdrawn.

Potential lost growth on a \$10,000 withdrawal, assuming 6% annual return



This hypothetical example is used for illustrative purposes only and does not represent the performance of any specific investment. Fees and expenses are not considered and would reduce the performance shown if they were included. Rates of return will vary over time, particularly for long-term investments. Actual results will vary.

Special Exceptions for Employer Accounts

The 10% penalty does not apply for distributions from an employer plan to an employee who leaves a job after age 55, or age 50 for qualified public safety employees. SECURE 2.0 extended the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan, regardless of age, as well as to state and local corrections officers and private-sector firefighters.

Retirement account withdrawals can have complex tax consequences. Consult your tax professional before taking specific action.

SECURE 2.0: Big Impacts for Small Businesses

An AARP study released in July 2022 found that nearly half of all private sector employees ages 18 to 64 had no access to a retirement plan at work. It also found that small businesses are more likely to lack a work-based plan, putting their workers at a significant disadvantage when it comes to retirement preparations (see chart).

Last December, Congress passed a \$1.7 trillion omnibus package that included the SECURE 2.0 Act of 2022, a sweeping set of provisions designed to improve the nation's retirement-planning health. Here is a brief look at some of the tax perks, rule changes, and incentives included in the legislation to help small businesses and their employees.¹

Tax Perks for Employers in 2023

Perhaps most appealing to small business owners, the Act enhances the tax credits associated with adopting new retirement plans, beginning in 2023.

For employers with 50 employees or less, the pension plan start-up tax credit increases from 50% of qualified start-up costs to 100%. Employers with 51 to 100 employees will still be eligible for the 50% credit. In either case, the credit maximum is \$5,000 per year (based on the number of employees) for the first three years the plan is in effect.

In addition, the Act offers a tax credit for employer contributions to employee accounts for the first five tax years of the plan's existence. The amount of the credit is a maximum of \$1,000 per participant, and for each year, a specific percentage applies. In years one and two, employers receive 100% of the credit; in year three, 75%; in year four, 50%; and in year five, 25%. The amount of the credit is reduced for employers with 51 to 100 employees. No credit is allowed for employers with more than 100 workers.

Rule Changes and Relevant Years

In 2024, employers will be able to adopt a starter 401(k) or similar 403(b) plan, an auto-enrollment plan for employee contributions only. The plan may accept up to \$6,000 per participant annually (\$7,000 for those 50 and older), indexed for inflation. Designed to be lower cost and easier to administer than traditional plans, these programs impose minimum and maximum contribution rates and other rules.

SIMPLE plans may benefit from two new contribution rules. First, employers may make nonelective contributions to employee accounts up to 10% of compensation or \$5,000. Second, the annual contribution limits (standard and catch-up) for employers with no more than 25 employees will increase by 10% more than the limit that would otherwise apply. An employer with 26 to 100 employees would be permitted to allow the higher contribution limits if the employer makes either a

matching contribution on the first 4% of compensation or a 3% nonelective contribution to all participants, whether or not they contribute. These changes also take effect in 2024.

Beginning in 2025, 401(k) and 403(b) plans will generally be required to automatically enroll eligible employees and automatically increase their contribution rates every year, unless they opt out. Employees will be enrolled at a minimum contribution rate of 3% of income, and rates will increase each year by 1% until they reach at least 10% (but not more than 15%). Not all plans will be subject to this new provision; exceptions include those in existence prior to December 29, 2022, and those sponsored by organizations less than three years old or employing 10 or fewer workers, among others.

Worker Savings Amounts: With Retirement Plan vs. Without



Source: Employee Benefit Research Institute, 2023. "With plan" includes workers with a defined contribution plan, IRA, or defined benefit (DB) plan. Total assets include savings and investments other than the value of their home and DB plan. Numbers may not add up to 100% due to rounding.

Participant Incentives on the Horizon

SECURE 2.0 drafters were creative in finding ways to encourage workers to take advantage of their plans. For example, effective immediately, employers may choose to offer small-value financial incentives, such as gift cards, for joining a plan, or beginning in 2024, they may provide a matching contribution on employee student loan payments. Also starting in 2024, workers will be able to withdraw up to \$1,000 a year in an emergency without having to pay a 10% early distribution penalty, which may ease the fear of locking up savings until retirement (restrictions apply).

1) SECURE stands for Setting Every Community Up for Retirement Enhancement and originated with the SECURE Act of 2019.

Should You Organize Your Business as an LLC?

There's a certain amount of risk that comes with owning a business. Accidents can happen no matter how well a company is run, and a lawsuit could be devastating if the business is found to be at fault.

A limited liability company (LLC) is a business structure that offers many of the same legal protections as a corporation. Establishing an LLC creates a separate legal entity to help shield a business owner's personal assets from lawsuits brought against the firm by customers or employees.

In theory, the financial exposure of the owners (members) would be limited to their stake in the company, but exceptions may include any business debt they personally guarantee or misdeeds (such as fraud) they carry out. But just like a corporation, an LLC can lose its limited liability if the owner does not follow formalities that continue to exhibit the separate existence of the business — which is known as "piercing the veil."

Beyond liability protection, there are some additional benefits associated with LLCs.

Tax efficiency. An LLC is a pass-through entity for tax purposes, so a firm may pass any profits and losses to the owners, who report them on their personal tax returns. Members can elect whether the LLC should be taxed as a sole proprietorship, a partnership, an S corporation, or a C corporation, provided that it qualifies for the particular tax treatment. For example,

about 71.5% of business partnerships are LLCs, as are 8.8% of sole proprietorships.¹

Credibility. Starting an LLC may help a new business appear more professional than it would if it were operated as a sole proprietorship or partnership.

Simplicity. In most states, an LLC is easier to form than a corporation, and there may be fewer rules and compliance requirements associated with operating an LLC. The management structure is less formal, so a board of directors and annual meetings are not usually required.

Flexibility. Being registered as an LLC may facilitate growth because it's possible to add an unlimited number of owners and/or investors to the business, and ownership stakes may be transferred easily from one member to another. LLCs may also be owned by another business.

The specific rules for forming an LLC vary by state, as do some of the tax rules and benefits. A written operating agreement that outlines the division of ownership, labor, and profits is a common requirement. It generally costs more to form and maintain an LLC than it does to operate as a sole proprietor or general partnership, but for many businesses the benefits may outweigh the costs.

1) Internal Revenue Service, 2022 (most recent data from 2019)

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