

The SECURE Act Helps Attract & Retain Talent Using Tax Incentives to Start a 401(k)

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Business
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Full transcript

Gene Marks:

Hey everybody, this is Gene Marks, and welcome to the Paychex Business Series Podcast. I'm glad you're here with us today. We've got a great conversation coming up with both Dan Notto and Meghan Jacobson. Both of them are with J.P. Morgan Chase. Dan is an attorney an ERISA lawyer with J.P. Morgan Chase, and Meghan is on the research side and both of them have a lot of information to share with us about retirement plans, particularly the SECURE Act. If your small business doesn't have a retirement plan, it really is something that you should have. And we're going to give you some good reasons why. Dan is going to talk about the SECURE.

Gene Marks:

Act and some of the interesting benefits in that SECURE Act that can really have a cash impact on your business. So you don't want to miss that.

Gene Marks:

And Meghan is going to share with us some data on a recent J.P. Morgan survey about small businesses and their participation in 401(k), is some of the things that are not only stopping them but also encouraging them to create 401(k)s for their business. So Daniel, Meghan, thank you very much for joining me. I'm glad you guys took the time out to spend the time and kind of educate us a little bit on 401(k)s and the SECURE Act. But before we get started, Daniel, let me start for you, first of all, tell me you're a managing director at J.P. Morgan. Tell us a little bit about what you do there.

Daniel Notto:

Yeah, so I'm actually an ERISA lawyer by profession. But my role at J.P. Morgan is that of an ERISA strategist, which means I follow proposed and enacted laws and regulations that relate to the retirement plan world. And I help our clients and our own people understand what they might mean to them.

Gene Marks:

Got it. And you're based in New York, right?

Daniel Notto:

Yes, I am.

Gene Marks:

All right, Very good. And Meghan, how about yourself? Now I'm assuming it's Meghan and not Meg or Maggie or anything like that, right?

Meghan Jacobson:

Well, I'm the oldest of five kids, so I respond to a variety, but Meghan is just fine.

Gene Marks:

Yeah. I'm sure you probably have responded to a variety of things, but Meghan you are an executive director at J.P. Morgan right? So what... Tell us a little bit about what you do there.

Meghan Jacobson:

That's right, and I am based in New York as well, and I head up our US Insights Programs focusing on retirement, the markets, and portfolios.

Gene Marks:

Got it. Okay. So you're more on the research side. Is that a fair statement to make?

Meghan Jacobson:

That's correct.

Gene Marks:

Okay. So we've got an attorney, we've got a researcher, we have people that know and specialize in 401(k) retirement plans. So let's get to it. Dan, I'm going to start with you. The SECURE Act passed Congress, I guess a couple of years ago at this point, as we're talking right now, I would love it very much if you could explain to us what the SECURE Act is and how it impacts small businesses.

Daniel Notto:

Sure. It was indeed a major piece of retirement legislation that passed, yeah. A little over a year ago now at the end of 2019. And unlike a lot of things that happen or don't happen in Congress, this had overwhelming bipartisan support. In fact, when it passed the House of Representatives, it passed by a vote of 417 to three. Amazing. And we hadn't seen any significant changes to the laws that govern retirement plans and IRAs for over 14 years prior to the passage of the SECURE Act. So we were definitely overdue for some change. And for years prior to its enactment, policymakers had been considering ideas for improving Americans' retirement securities. And many of those ideas found their way into the SECURE Act and actually SECURE is actually an acronym for setting every community up for retirement enhancement. So they came up with that nifty acronym and indeed there are many provisions in the SECURE Act that will impact nearly every community from individuals and businesses, both large and small. So it really quite a number of significant changes were enacted with the SECURE Act.

Gene Marks:

What type of changes would impact small businesses?

Daniel Notto:

There were a number and the basic theme for small businesses was how do we encourage more small businesses to set up retirement plans. Because retirement plan coverage among employees of small businesses is not really what it is with those of us who work for rather large companies, where nearly all employees who work for really huge companies have access to a retirement, not so in the case of the smaller employers and Congress zeroed in on employers with 100 or fewer employees, and that means a lot of employees are in a lot of small businesses and what they did in the SECURE Act is they enhanced a tax credit for those small employers to help them defray some of the out-of-pocket costs that they would incur when setting up a retirement plan.

Daniel Notto:

As a result of the SECURE Act, now employers can take tax credits of up to \$5,000 a year for the first three years that they set up a plan to the extent that they have out of pocket costs, like costs to administer the plan or costs to pay for record-keeping and so on that they're paying out of pocket. So that was really quite an enhancement. The SECURE Act also created a \$500 credit for those same small employers of those with 500 or excuse me, with 100 or fewer employees, if they add an automatic enrollment feature to their 401(k) plan, automatic enrollment features are very popular, Congress is trying to encourage more of that. And so they're giving small employers a \$500 credit if they do that.

Gene Marks:

Well, let me just stop you right there. So just to go back over there. So if you've got less than 100 employees and you have no 401(k) plan at all, and you want to set one up, the SECURE Act will give you a \$5,000 credit per year for three years, that you can apply against your income taxes as a small business owner. Is that a credit Dan, that it's to reimbursed for funds that you spent or is that just a flat-out \$5,000 a year credit regardless of what you spent studying up the plan?

Daniel Notto:

No Gene, it actually is a credit against the funds that you shell out, out of your pocket to set up a plan in connection with costs such as to pay the record keeper, to pay other service providers. And it really, there's kind of a formula that you'll want to work with your CPA or other tax preparer to kind of work through a formula because it takes into account the number of employees you have and so on and so forth. So it's a little bit of math involved in and figuring.

Gene Marks:

I got it. But I guess so, it's really kind of designed the credit is to offset your costs for setting up the plan. So the government is saying, "Hey, set up a 401(k) plan, you'll have a tax credit, so it will not cost you anything to do that. And that's the incentive we're giving you." So I guess that's number one, right? And then there's this the other credit for the automatic enrollment. So does that apply if you have an existing 401(k), like say I've got in my company and existing 401(k) plan and I want to say, okay, we don't have automatic enrollment. We're going to turn that on. We're going to have that feature going for, just by doing that do I get this \$500 a year credit for three years?

Daniel Notto:

You absolutely do. In fact, that's something that I always remind advisors and small employers too. Don't leave that on the table because that is something that by adding a feature that will benefit your employees, you can get a \$500 credit from uncle Sam and that's really, really good an existing plans or new plans.

Gene Marks:

Got it. And a couple of things on the \$500 enrollment now, that doesn't seem like a reimbursement of costs because I don't think that really costs an employer anything. You just basically, it's a policy that you just startup, right? So it's almost like a bonus that you're getting for having automatic enrollment. Does that make sense?

Daniel Notto:

That makes very much sense, and it's what you said Gene is absolutely true. Don't leave that on the table.

Gene Marks:

Right.

Daniel Notto:

Add it to your plan has nothing to do with any costs that you may incur, which as you say, you probably won't incur costs. Take advantage of it if you're willing to add automatic enrollment.

Gene Marks:

Got it. And if you're recommending, if you do set up automatic enrollment with a 401(k) plan in your business the idea is to encourage people to contribute more because it makes it just, again it's automatic so it's just happening. But your employees aren't required to do it. They can always opt-out. Correct?

Daniel Notto:

That's actually correct. But we know human nature says we typically don't. And if an employer is automatically enrolling us, we probably think our employer has our best interests at heart, which most do of course, you can understand the plan and as a result, we're saving. This the idea of automatic features like automatic enrollment and automatically escalating the amount of my contribution percentage every year. These are things that policymakers are trying to encourage over the last decade or so.

Gene Marks:

Got it. Is there anything else that pertains, anything significant that pertains to small businesses in this SECURE Act? I'm going to come back to you later and ask you about the future, but is there anything we're missing?

Daniel Notto:

Well, there's one other thing, Gene, I'll probably... It's probably worth mentioning the SECURE Act, created a new type of retirement strand, a plan structure called a Pooled Employer Plan. And those just became effective this year or that part of the law just became effective in 2021. And what these are, are arrangements which will allow multiple employers to band together and participate in a single plan. And by doing so, they can enjoy economies of scale and offload some of the fiduciary duties to some professionals. And therefore they won't have to be responsible for certain things. And as I said, this part of the act just became effective this year. So many retirement plans, service providers are looking to get into this pooled employer plan marketplace. And we expect that this will be an area that will develop over time. And more employers we'll be likely interested and willing to check these arrangements out.

Gene Marks:

Got it. And if to create sort of like this pooled employer thing, again if I'm a business owner, it kind of sounds like the thing I would turn to my retirement plan provider and ask if they're doing that right. I'm not going to be going down main street knocking on doors and asking people to join my whole-provider group. Would I?

Daniel Notto:

No, no, you're absolutely right. It's the existing retirement plan provider community that is by in large interested in stepping up and becoming pooled plan providers.

Gene Marks:

Got it. Meghan, I have to ask you like the amount of small business owners that actually have 401(k) plans are... It's really like almost like half in the country or some number like that. Maybe you've got some data to support this, but it's nowhere near as much as you think. I mean, if you have a small business, setting up a 401(k) plan is really not that expensive to do over the course of time. And there's a lot of benefits for having a retirement plan. What are your... What is your research show you Meghan, about small businesses participating in 401(k) plans, and I'm kind of curious as to what your thoughts are as to why the participation isn't higher.

Meghan Jacobson:

Yep. And I think that's just a great segue to talk about some of our research because those are the types of questions that we set out to answer last summer when we conducted a survey of small business owners to get their thoughts around how they were offering retirement plans to their employees. And I think in a year when so many small businesses were forced to rethink how they offer goods and services to the marketplace, and how they just conducted business in general. What we really heard was optimism. I think on the good news side, a large majority were confident that their businesses would survive the current economic clients. And nearly half of those that we surveyed did offer a retirement plan. And that was a benefit behind only health care. But for those who didn't offer a retirement plan, many of the people that we spoke to talked about there are plans to offer one in the next 12 months, which was really exciting for us to see.

Gene Marks:

Yeah, that's really interesting to hear that. So, but again, why do you think those so many business owners have been slow to offer these kinds of plans? They kind of seems like a no-brainer.

Meghan Jacobson:

We would agree with you that there are certainly so many reasons to offer them. And one of our goals with the research was to really overcome some of those misperceptions. When we did talk to small business owners and we asked them why they did offer plans. So many of them told us that they felt responsible for their employees across a range of issues. Things like healthcare, work-life balance, financial wellness. The second thing that we heard from small business owners is that they do see the benefits of a 401(k) plan. The majority of the people who did offer them wanting to help their employees to save. But I think what's critical for those small businesses who aren't offering them today. What employees actually see is that this is a really effective way to attract talent and also retain the talent that you have today.

Meghan Jacobson:

I think, especially in a market where talent matters more than ever, it's critical that small business owners start to think about investing in their current workforce and offer those competitive benefits, to think about attracting new employees to their small businesses. And the last thing that I would say is on the employee side themselves, most employees, I think as Dan alluded to earlier, do think that their employer has some degree of responsibility to help them save, about three-quarters of them do. And I think what's more we're hearing is that through our collaboration with research partners, like the Employee Benefit Research Institute, 401(k) vehicles are actually the only savings vehicle for the vast majority of Americans. And I think that really just underscores the importance of the employer's role in saving.

Gene Marks:

Yeah. There's one other thing I also think about as a business owner myself, it's just, there's a selfish reason, right? I mean, if I set up a 401(k) plan and the more my employees save, the more opportunities I have to put away from my own retirement, correct?

Meghan Jacobson:

Absolutely. I think there's been a ton of advancements in the marketplace that have made delivering a 401(k) a much more realistic option for many small business owners. You mentioned cost and helping people save. I think one of the things our research has shown is that the cost of setting these types of plans up to have declined pretty significantly in recent years. Dan also mentioned tax credits earlier in the conversation. And I think tax credits were cited by about 30% of the people that we spoke to as another benefit of offering 401(k) plans to their employees.

Gene Marks:

Yeah, it does make a lot of sense. Okay. So Meghan I'm going to put you on the spot. I mean, okay I want to set up a 401(k) plan, I don't have a 401(k) plan. What advice would you give me?

Meghan Jacobson:

Certainly, there are a ton of resources out there from the small plan providers themselves. But I think also a lot of the small business owners that we speak to work with either a financial advisor or a business bank, or even an accountant who can help steer them in the right direction.

Gene Marks:

Yeah, and I also think there are so many different providers, your own bank, your financial advisors, your right accounts and attorneys can all get you going. So any advice for me, if I'm setting up a 401(k) plan, what sort of pitfalls I should avoid or your mistakes I don't want to make?

Meghan Jacobson:

It's a great question. And certainly, there are pitfalls out there again. I think I would just reiterate leaning heavily on your providers. Don't just go with the first one. Survey a wide variety, and go to those people that you trust. Again, the banks, the financial advisors, the accountants who can really help you sort through the key differences between each provider.

Gene Marks:

Hey Dan, some small business owners have concerns about their fiduciary duties when it comes to these 401(k) plans, how responsible am I for my employee's money?

Daniel Notto:

You are indeed a fiduciary, if you are an employer that maintains a retirement plan, which means when operating that plan, you have to act in their best interest. You have to operate them exclusively for their benefit. Now, as Meghan said, there can be some tangential benefits to the company itself by attracting and retaining good people and keeping them happy. But primarily under the federal law, you are a fiduciary and you have to act in their best interest and you have to act prudently. You have to investigate investment options and other service providers to make sure that they're of high quality and that the fees are reasonable.

Daniel Notto:

There have been a number of lawsuits in the last 10 or 15 years, primarily against the really, really large employers. So over their 401(k) plans where the allegations have been, that the employer was not prudent, was not acting in the best interest of their participants. They weren't paying attention to fees and costs. They used investments that perhaps weren't appropriate. And there've been a lot of, almost a billion dollars of settlements in those cases, hundreds of cases over the year. So yes, there is some fiduciary responsibility, but again, as Meghan suggested, relying on advisors, relying on financial advisors, accountants, and attorneys to help guide you through the process is really a way to assure yourself that you're not going to be one of these organizations that get sued.

Gene Marks:

Right. Meghan, does your research show that the business owners recognize that they do have this fiduciary duty, or has any of your research shown that that is been sort of an obstacle for business owners to get 401(k) plans because they're concerned about that liability and that responsibility?

Meghan Jacobson:

Our survey from last summer of small business owners didn't dive as deep into the notion of being a fiduciary, but it is something that we're looking forward to covering in future research.

Gene Marks:

Yep. Fair enough. All right, so Dan, let's look into the future now. I promised earlier on, I wanted to ask you about what's coming up next. There is been talking, there has been some your proposed legislation for a SECURE Act 2.0, am I correct?

Daniel Notto:

Yeah, that's correct. And actually, the name SECURE 2.0 is kind of the shorthand name for a bipartisan effort to make further improvements to the system. The SECURE Act did a lot of good things, but many believed that there's more to be done. And so there've been a number of bills that have already been introduced and what's likely to happen is sometime later this year, those bills will kind of coalesce into a single bill, which people are again for now, at least calling SECURE 2.0. So some interesting things that are floating around, for example, furthering tax credits for small employers and something that I haven't seen in my over 30 years of working as a lawyer and actual tax credit for a small employer that would offset the employer contributions.

Daniel Notto:

Now there are tax credits we talked about, the startup credit offsets out-of-pocket costs that the employer makes are encouraged to set up a plan. This would actually provide credits as high as a \$1,000 per employee per year for employer contributions to the plan. So think of an employer that puts in a 401(k) plan and makes matching contributions. Those matching contributions can be the source of a credit. So in other words, Uncle Sam is helping to make contributions to the plan. Now that was really amazing to see that in a bipartisan bill that was introduced last year is really quite interesting. So we'll watch that one very, very carefully.

Gene Marks:

Yeah. That really is an enticing thing. Do you have any... President Biden when he was running for office has been talking about changes to 401(k), right now they're based on pre-tax contributions and he has been kind of weighing some substantial treatment of 401(k) whereby rather than having pre-tax contributions, people would get tax credits based on their level of contributions to 401(k). And apparently, when you do the math that benefits more lower and middle-income people, rather than higher-income people based on the way the tax rates are now. And I'm curious if you have any thoughts on that or have done any reading on that, that you might want to share.

Daniel Notto:

Yeah. If that did come up in the Biden campaign. And that's an idea that has been floating around various think tanks for a while. We don't think there's any appetite in Congress on either side of the aisle to go that route, rather in the SECURE 2.0 proposals, there is another way to do essentially the same thing, and that is improve an already existing tax credit called the saver's credit. And this is a credit that individuals get by putting money in a 401(k) or an IRA. Right now that credit is fairly limited, it's only \$1,000. And if you don't already have federal income tax liability, that credit is nonrefundable, meaning the credit doesn't do you any good if you don't otherwise all federal income tax.

Daniel Notto:

Well, one of the proposals out there would make that credit refundable. Even though you don't have federal income tax, you would get a check from the government. More precisely the government would put money into the plan or IRA that you contributed to in the first place. And then also there are proposals to raise the income thresholds for eligibility for that credit. So rather than a complete overhaul of the system as has been alluded to by the Biden campaign, which again, I don't think it's going to happen. What's more likely to happen is improving this existing saver's credit, which kind of gets at the same idea.

Gene Marks:

Dan Notto is a managing director and Meghan Jacobson is an executive director, boast director, excuse me, both at J.P. Morgan Chase. And both of you guys, if you haven't already Ron Chernow's book, The House of Morgan gives an incredible history of the company that you are working at. That goes back turnout is the same guy that did Hamilton. So if you haven't read it, I recommend that you guys check it out as employees at J.P. Morgan, which is a great company, but thank you very much. Both of you guys for joining me, it was really informative information. My name is Gene Marks. You've been listening to the Paychex Business Series Podcast for more information to help you run your business and advice for running your business better, join us at paychex.com/worx again my name is Gene Marks and thanks guys very much for joining us. This podcast is property of Paychex, Inc 2021, all rights reserved.