

SECURE Act Brings Many Retirement Plan Changes

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On December 20, 2019, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was signed into law. The SECURE Act is one of the most significant pieces of legislation impacting retirement plans in the past several years and includes many amendments to the Internal Revenue Code and ERISA. Among others, the SECURE Act makes the following notable changes:

- **Delays payment of required distributions to age 72**
The required minimum distribution age is increased from age 70-1/2 to 72, effective for those attaining 70-1/2 on or after January 1, 2020.
- **Broadens eligibility rules for long-term, part-time employees**
Restricts exclusions under 401(k) plans for certain long-term, part-time employees. 401(k) plans will not be permitted to exclude from participation part-time employees who perform 500 hours of service for three consecutive years. Previously, 401(k) plans were permitted to exclude any employees with less than 1000 hours of service in a year. Note that this provision is effective January 1, 2021, which means that part-time employees will not be able to take advantage of this required coverage until at least 2024.
- **Provides relief for small unrelated employers to adopt "open" multiple employer plans**
Existing Department of Labor (DOL) rules require employers that participate in the same "multiple employer plan" (MEP) to share an economic nexus and commonality of interests completely unrelated to providing benefits. The SECURE Act eliminated this nexus requirement for a "pooled employer plan" administered by a "pooled plan provider",

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effective for plan years beginning on or after January 1, 2021 (enough time for guidance to be issued from the DOL and IRS). Pooled employer plans, unlike other MEPs, will not be limited to employers that are in the same industry or geographic area, have a degree of common ownership, or contract with the same PEO.

- **Increases the percent cap on auto-enrollment contributions to safe harbor plans**

Currently, safe harbor 401(k) plans that include a qualified automatic contribution arrangement (QACA) may not automatically enroll or escalate employee contributions above 10% of the employee's eligible compensation. The SECURE Act raises this 10% cap on automatic contributions to 15% after the employee's first plan year of participation. This change is effective for plan years beginning after December 31, 2019.

- **Simplifies certain 401(k) plan safe harbor requirements**

Effective for plan years beginning after December 31, 2019, the SECURE Act eliminates the safe harbor notice requirement for safe harbor plans that satisfy the safe harbor plan rules by making nonelective contributions to their employees. The SECURE Act also provides additional flexibility to add or amend safe harbor nonelective contributions to plans mid-year.

- **Modifies the timing of minimum distribution payments following a participant's death**

The SECURE Act changes the post-death required minimum distribution rules to require that all distributions after death (except for distributions to certain types of beneficiaries) be made within 10 years following the year of the participant's death. This rule will apply to defined contribution plans, but not defined benefit plans. This rule generally applies to distributions related to deaths occurring after December 31, 2019, (or December 31, 2021, for certain collectively bargained plans and governmental plans).

- **Qualified distributions are permitted for expenses associated with childbirth or adoption**

Effective for plan years beginning after December 31, 2019, defined contribution plans may be amended to permit penalty free distributions of up to \$5,000 to cover costs associated with the birth or adoption of a child.

- **Requires lifetime income disclosures**

Effective within a year of the DOL issuing final regulations in this regard, defined contribution plan sponsors will be required to include a "lifetime income disclosure" on participant benefit statements, even if the plan does not provide for annuity distributions.

- **Accelerations of in-service distributions for defined benefit plans**

In-service distributions from defined benefit plans are now permitted as early as age 59-1/2. Previously, defined benefit plans could allow for in-service distributions beginning as early as age 62.

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Plans looking to take advantage of these changes will require a plan amendment, and likely modifications to Summary Plan Descriptions. Contact our employee benefits department if you wish to implement or have questions about these changes, or if you wish to learn more about the SECURE Act.