The SECURE Act Part 1: Immediate Changes to Retirement Plans

Labor & Employment Law Update

By Kelly Haab-Tallitsch on February 18, 2020

Congress recently passed the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act), the largest package of retirement plan reforms in more than ten years. This sweeping federal legislation aimed at the private employer-based retirement system is not to be confused with the Illinois Secure Choice Act, passed in 2015, which created a state-run retirement savings program.

The SECURE Act includes a myriad of provisions from multiple bills intended to make it easier for businesses to offer retirement plans and for individuals to save for retirement. The law impacts defined contribution (DC) plans, defined benefit (DB) plans, individual retirement accounts (IRAs) and 529 plans. The Act contains both mandatory and optional provisions, some effective as early as January 1, 2020. This article is Part 1 in a two-part series and highlights the most significant changes impacting existing retirement plans. Part 2 will discuss the small business tax incentives and changes to multiple employer plan rules in the SECURE Act aimed at encouraging employers to offer retirement plans.

Required Minimum Distributions (Mandatory, 1/1/2020)

The SECURE Act increases the required minimum distributions age from 70 ½ to 72. This change applies to both DC and DB plans and is effective for participants who turn 70 ½ after December 31, 2019.

Additionally, post-death distributions from DC plans and IRAs must now be made by the end of the 10th calendar year following the year of death in most cases, instead of permitting distribution over the beneficiary's life expectancy. This 10-year cap generally does not apply to certain beneficiaries, such as a surviving spouse or minor child. This change applies to deaths after December 31, 2019.

Plans must be in operational compliance with the new required minimum distribution rules as of January 1, 2020.

Part-time Employee Participation (Mandatory, 1/1/2021)

401(k) plans will be required to extend participation to any part-time employee who has worked at least 500 hours in each of the immediately preceding three consecutive 12-month periods. Eligible part-time employees must be allowed to make elective deferrals, but employers are not required to make matching or other employer contributions on their behalf.

These new eligibility rules apply to plan years beginning on or after January 1, 2021. However, because the 12-month periods for purposes of counting the 500-hour requirement are not counted before 2021, actual eligibility for a plan will not occur until the 2024 plan year.

Optional Provisions

The SECURE Act includes several optional changes plan sponsors can take advantage of if they choose, effective for plan years beginning January 1, 2020 or later. Key provisions include:

- ***In-Service Withdrawals for Childbirth or Adoption Expenses*** – Defined contribution plans (and IRAs) can permit withdrawals of up to $5,000 for eligible child care and adoption expenses (not subject to the 10% early withdrawal tax).
- ***Lower Age for In-Service Withdrawals*** – Pension and Governmental 457(b) plans can permit in-service withdrawals at age 59 ½, lowered from 62 and 70 ½, respectively.
- ***Expanded Disaster Relief*** – Plans can allow participants impacted by certain listed hurricanes and other nationally declared disasters between January 1, 2018 and February 18, 2020, to take up to a $100,000 distribution or a loan (with no 10% early withdrawal tax), which can be recontributed within 3 years. Participants have until June 17, 2020 to take advantage of this relief. Special plan amendments must be adopted by the end of the 2020 plan year.
- ***Increased Maximum Automatic Deferral Rate –*** For safe harbor 401(k) plans with a Qualified Automatic Contribution Arrangement (QACA) the limit on the maximum automatic deferral rate is increased from 10% to 15%, except for the participant's first year, which remains 10%.

Plan sponsors should be aware that the SECURE Act requires immediate changes to retirement plan administration. Employers should consult with third-party administrators and advisors to ensure plans are in operational compliance and timely amended as needed.