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Unpacking the SECURE Act, Part II

How the new law affects your business

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On Dec. 20, 2019, Congress passed the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act). The act is the first major piece of retirement legislation since the passage of the Pension Protection Act in 2006, and it seeks to help workers increase their retirement savings by loosening or eliminating the cost, administrative, and legal barriers that often prevent employers from offering retirement plans.

How the SECURE Act Affects Your Business

While the SECURE Act is an overall step in the right direction when it comes to helping Americans save for retirement, various provisions stand to impact business owners and plan sponsors. As a result, it's important for business owners to have a deep understanding of the new laws, their effective dates, and how they impact existing or new employer-sponsored plans.

The following is an overview of the provisions that affect employers and plan sponsors:

- Expanding multiple employer plan participation

  Section 101 expands on the multiple employer plan (MEP) model with a pooled employer plan (PEP). The PEP lets smaller, unrelated employers pool together into one plan to ease the burden of administrative costs. The provision also removes the "bad apple" rule that disqualified a plan if one employer could not satisfy a plan requirement.

  How it impacts you

  Beginning December 31, 2020, employers and plan sponsors who choose to participate in a PEP must be sponsored by a pooled plan provider (PPP). The PPP can be a financial services or insurance company, as well as a third-party administrator or record keeper. The PPP must also serve as fiduciary, an ERISA plan administrator, register with the Department of Labor (DOL) and IRS, and maintain ERISA bonding limits of up to $1 million. The DOL and IRS will provide further guidance this year.

- Increasing the safe harbor auto enrollment cap

  Section 102 raises the auto enrollment safe harbor elective deferral limit cap from 10 to 15 percent of employee pay.

  How it impacts you

  For plan years beginning after Dec. 31, 2019, employers and plan sponsors who adopt this provision are required to outline the 15 percent cap in their plan document through a Summary of Material Modifications. Also, business owners should double check with their provider to make sure they are prepared to administer the changes.

Please see disclosure on page 5.

- Simplifying the safe harbor 401(k) rules

  Section 103 enacts various changes to the election of safe harbor status. First, employers and plan sponsors are no longer required to distribute an annual safe harbor notice if they make safe harbor qualified nonelective contributions of 3 percent. Second, employers and plan sponsors can now adopt safe harbor midyear for the 3 percent nonelective option prior to the end of the plan year. After that, amendments are only allowed if a nonelective contribution of 4 percent or more of compensation is contributed for eligible employees for the plan year.

  How it impacts you

  By removing the safe harbor notice requirement and enabling plans to become nonelective safe harbor plans, this provision increases the likelihood of plan adoption among employees. It also allows employers and plan sponsors to correct a failed actual deferral percentage or actual contribution percentage tests. Additionally, by enabling employers to make a 4 percent safe harbor nonelective contribution after the end of the plan year, the provision gives them the opportunity to correct a failed top-heavy test.

- Helping small employers with pension start-up costs by increasing credit limitation

  Section 104 increases the credit for small employers (100 employees or less being paid at least $5,000 per year) who seek to establish or administer a new eligible employer plan – in this case, a 401(k), 403(b), SIMPLE IRA, and/or SEP IRA. The increase is a result of changing the calculation of the flat dollar amount limit on the credit to "the greater of (1) $500 or (2) the lesser of (a) $250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan or (b) $5,000.

  How it impacts you

  For taxable years beginning after December 31, 2019, employers and plan sponsors can consider adopting this credit if they are eligible and if they currently do not offer an employer-sponsored retirement plan. The credit applies for up to three years. Solo plans are not eligible for this credit.

- Implementing a new credit for employer plans with automatic enrollment

  Section 105 implements a new tax credit of up to $500 per year to help employers offset the costs of initiating new 401(k) and SIMPLE IRA plans with an automatic enrollment option.

  How it impacts you

  This law recognizes the correlation between automatic enrollment and increases in employee plan participation and individual retirement savings. Similar to the credit limitation above, the new credit is available for three years. However, employers who currently have an existing plan are eligible for this credit if they convert it to include automatic enrollment.

- Prohibiting plans from making loans through credit cards

  Section 108 prohibits qualified employer plans from making plan loans through credit cards and similar arrangements.

  How it impacts you

  This rule is designed to help American workers preserve their retirement savings by preventing plan sponsors from making loans that workers would spend on unrelated routine or small purchases. Employers and plan sponsors who make plan loans through credit cards should review their retirement plan documents and edit them accordingly, as well as communicate the change to plan participants.

- Terminating 403(b) plans by treating custodial accounts like annuity contracts

  Section 110 makes it easier for employers sponsoring 403(b) plans with custodial accounts to terminate the plan. Before the passage of the Act, it was difficult for employers to do so if participants were non-responsive. However, 403(b) plans that contained individual annuity contracts were easier to terminate since they could be distributed in-kind through board action. The new law, in effect, makes custodial accounts similar to annuity contracts and, as a result, makes it easier for employers to terminate a 403(b) plan.

  How it impacts you

  The Treasury has committed to issuing guidance on the treatment of custodial accounts upon termination of 403(b) plans by June 2020. Once implemented, employers and plan sponsors who seek to terminate a sponsored 403(b) plan can distribute amounts held in a custodial account to each participant or beneficiary of the plan. The distributed accounts will then be maintained on a tax-deferred basis as a 403(b) custodial account until paid out in full. The Treasury's guidance will be retroactively effective for tax years starting after December 31, 2018.

- Allowing long-time part-time workers to participate in 401(k) plans

  Section 112 requires certain employers offering 401(k) plans (with the exception of collectively bargained plans) to allow part-time employees to participate if they meet certain length of employment and hours-worked requirements. Previously, employers were able to exclude these employees.

  How it impacts you

  Employers are now required to allow employees who have at least one-year of continuous employment and have worked at least 1,000 hours, or who have three consecutive years of employment and worked at least 500 hours, to participate in the company's 401(k) plan. Employers should update the necessary retirement plan documents, coordinate with providers on administration, and provide participants with a Summary of Material Modifications.

- Relieving pension funding for community newspapers

  Section 115 provides pension-funding relief for community newspaper plan sponsors. The relief is the result of increasing the interest rate to calculate funding obligations to 8 percent. The law also extends the amortization period from 7 years to 30 years.

  How it impacts you

  The relief changes under this provision reduce the annual amount community newspaper employers are required to contribute to their pension plans. The special rules apply to plan years ending after December 31, 2017.

- Treating plans adopted by filing due date of taxable year as though they were adopted at the close of taxable year

  Section 201 permits businesses and plan sponsors to treat retirement plans that were adopted before the filing due date for the taxable year as if they were adopted on the last day of the taxable year.

  How it impacts you

  This law gives businesses and plans sponsors additional tax planning time and flexibility when adopting a plan. It also give employees the ability to receive contributions for the prior year, thereby assisting them with saving for retirement. The law is effective for the tax years beginning after December 31, 2019.

- Reducing administrative costs with filing of consolidated Form 5550

  Section 202 directs the Department of Labor (DOL) and the IRS to provide for filing of a consolidated Form 5550 for similar plans. Eligible plans include defined contribution plans with the same trustee, fiduciary, and plan administrator that uses the same plan year and investments (or investment options) to participants and beneficiaries.

  How it impacts you

  The consolidated Form 5550 is projected to reduce overall administrative costs and the compliance burden for small business. As a result, it makes it easier for small businesses to sponsor a plan and, in effect, helps their employees save for retirement.

- Increasing transparency with a lifetime income stream disclosure in 401(k) statements

  Section 203 requires plan sponsors to provide a lifetime income disclosure at least once a year to defined contribution plan participants. The disclosure, which the Secretary of Labor must provide a model for, is required to show "the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams."

  How it impacts you

  The new law directs the DOL to develop a model disclosure that includes the above information. If plan fiduciaries and sponsors compute the disclosures following the assumptions and guidance of the model, they will be exempt from liability under ERISA. The law is applicable to participant benefit statements distributed more than one year after the DOL issues interim final

rules, the model disclosure, and assumptions.

- Providing certainty for plan sponsors when selecting annuity providers

  Section 204 provides fiduciary safe harbor for plan sponsors when selecting lifetime income providers for their plan.

  How it impacts you

  The safe harbor status satisfies the prudence requirement when it comes to selecting insurers for a guaranteed retirement income contract. Additionally, plan sponsors are protected from liability for any participant or beneficiary losses in the event an insurer is unable to meet its financial obligations outlined in the contract.

  Employers and plan sponsors should know where to find the written representation of current and prospective annuity providers' financial capabilities. Also, in this case, fiduciaries are not required to select the lowest-cost contract – the features and benefits of an insurer can be taken into consideration as well.

- Increasing the penalty for failing to file retirement plan returns

  Section 403 modifies "failure to file" penalties for retirement plan returns. The increased penalties are an attempt to improve overall tax administration by encouraging employers and plan sponsors to file "timely and accurate information returns and statements, as well as the provision of required notices."

  How it impacts you

  The penalties for failure to file are as follows:
  - The Form 5500 penalty will now be $250 per day, not to exceed from $15,000 to $150,000.
  - Failing to file a registration statement will incur a penalty of $10 per participant per day, not to exceed $50,000.
  - Failing to file a required notification of change will incur penalty of $10 per day, not to exceed $10,000.
  - Failure to provide a required holding notice will result in a penalty of $100 per failure, not to exceed $50,000 for all failures during a calendar year.

Addressing the New Legislation

The United States workforce has experienced drastic changes in the past decade. Small businesses make up the overall majority of business in America, and they employ nearly half of the country's workforce. The SECURE Act helps these businesses by making it easier to offer and administer retirement plans so their employees can save for retirement.

The breakdown above represents our initial impressions of the new legislation's various provisions. We encourage you to speak to a financial advisor to discuss the direct ways the new laws affect your business or employer-sponsored plan.

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