The SECURE Act is here, as is a summary guide for employers

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COMMENTARY

Although the plethora of new laws related to the coronavirus are garnering most of our current focus, the Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law in December 2019 and should not be overlooked. The SECURE Act contains changes for Internal Revenue Code 401(a), 401(k), 403(b) and 457(b) plans. Although plan sponsors are not required to implement all of the changes, they should understand the benefits and costs of the optional ones.

Minimum distribution rule changes

The SECURE Act changes the age for required minimum distributions and narrows the group of beneficiaries eligible to receive distributions of a deceased participant over the beneficiary's lifetime.

The SECURE Act changes the required beginning date from April 1 following the year in which a participant reaches age 70½ to April 1 following the year in which the participant reaches age 72, or if later, April 1 immediately following the year in which the participant's employment terminates. This change is effective for participants who reach age 70½ after Dec. 31, 2019.

The SECURE Act also changes the rules regarding the receipt of required minimum distributions by the beneficiaries of deceased participants, by narrowing the group of beneficiaries who can receive distributions from a plan after a participant's death over the duration of the beneficiary's expected lifetime. Prior to the SECURE Act, any individual designated as a beneficiary by a participant could receive distributions over the beneficiary's lifetime. Now this option requires that the beneficiary is an eligible designated beneficiary. This is defined to include spouses, minor children, individuals who have disabilities, individuals who have a chronic illness, and individuals who are not more than 10 years younger than the deceased participant.

Both of the changes described above are required and effective for plan years beginning on or after Jan. 1, 2020.

Changes for 401(k) safe harbor plans

The SECURE Act contains two optional changes for 401(k) safe harbor plans. These are plans that satisfy requirements in order to be exempt from certain annual nondiscrimination tests under the Internal Revenue Code.

A plan using the qualified automatic contribution arrangement (QACA) safe harbor automatically enrolls eligible employees into the plan and defers a default percentage of their compensation into the plan. Effective Jan. 1, 2020, a plan that uses the QACA safe harbor may increase the maximum default percentage of compensation to be contributed from 10 percent to 15 percent.

The SECURE Act also has changes for qualified nonelective employer contributions (QNEC). A plan that meets safe harbor requirements by utilizing a QNEC requires a minimum employer contribution for each participant regardless of whether the participant defers any amount of compensation into the plan.

The SECURE Act eliminates the annual safe harbor notice requirement for plans utilizing the QNEC safe harbor and permits employers to amend their plan during the plan year in order to bring the plan into compliance with the QNEC safe harbor. Specifically, an employer can now amend his or her plan during the plan year, up until the 30th day before the close of the plan year or up until the close of the following plan year, if the nonelective contribution is at least 4 percent of a participant's compensation. This change provides options for employers not certain whether they should make a QNEC until a portion or the plan year has passed, or all of it.

401(k) plan eligibility rules

Employers can currently exclude employees under age 21 and/or who have not worked 1,000 hours over the year from the employer's 401(k) plan. The SECURE Act changes this threshold and requires 401(k) plans to permit part-time employees who work a minimum of 500 hours for three consecutive 12-month periods to participate in the plan as long as they have also met the plan's age requirement, if any.

This is a required change that is effective for plan years beginning Jan. 1, 2021. Hours worked prior to Jan. 1, 2021 will not be taken into account for the purposes of determining plan eligibility under this new rule.

The SECURE Act brings a multitude of potential and required changes for the retirement plans that it affects. Employers that sponsor a plan affected by the SECURE Act's changes should consider which changes are required and which optional changes might be a good fit for their plan as we head into the second half of 2020.

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