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The SECURE Act of 2019 By David-Louis Browne, AIF®

What is The SECURE Act?

On December 20, 2019, efforts were made to reform the U.S. retirement system, as President Trump signed the SECURE (Setting Every Community Up for Retirement Enhancement) Act of 2019 into law. This piece of legislation will serve more than 500,000 small and mid-sized businesses, by making retirement plans more accessible and affordable, while working towards narrowing the U.S. savings gap.

The SECURE Act is designed to help more businesses offer retirement plans to their employees, while also encouraging employees to save more for retirement. There are several key provisions of this legislation that are notable, impacting both businesses, and individuals/plan participants.

Increased Tax Credits

The cost of adopting a retirement plan for employees was a major hurdle for many small business owners. To help offset costs, Congress previously offered a tax credit of $500 or 50% of the cost (whichever was less) for the first three years for companies with a maximum of 100 employees and at least one non-highly compensated employee. The SECURE Act has established an increased tax credit, which will now be capped at $250 times the number of non-highly compensated employees (NHCE) that are eligible to participate in the plan, but not exceeding an annual credit amount of $5,000. In addition, the minimum tax credit is now $500.

Multiple Employer Plans (MEPs)

Multiple Employer Plans have been a major talking point in the SECURE Act. Small businesses are now able to share the costs of establishing and maintaining a retirement plan. Employers can now join an “open” MEP, which allows for companies in different types of industries to band together in one plan. It is also important to note that employers are protected from the breach of other employers administrative and fiduciary responsibilities. Within each MEP, each participating employer has a fiduciary duty with certain responsibilities. With the MEPs, the act provides relief for employers that are participating in a MEP by eliminating the “one bad apple”, which includes any participating employer that has an operational issue. The participating employer with a defect in the MEP would be separated and moved into a different plan or an IRA. In addition, there are new rules that apply to the 5500s for MEPs.

Age Limits for Traditional IRA Contributions

The maximum age (70 ½) for contributions to a Traditional IRA has been repealed, and now permits those over age 70 ½ with earned income to contribute to their Traditional IRA.

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Access to Annuities in Retirement Plans

The SECURE Act is now making it easier to offer annuity / lifetime income products in company retirement plans. Plan sponsors are required to provide an annual notice to employees regarding the estimated monthly payment that the employee will receive in retirement. In addition, the legislation has implemented a Safe Harbor provision for annuities to simplify the compliance and fiduciary rules.

Safe Harbor 401(k) Requirements

Plan Sponsors are no longer required to provide an annual notice if the plan is operating under a Safe Harbor and making non-elective contributions to satisfy non-discrimination requirements. However, they are required to provide an initial notice to employees before the employee is eligible.

Elimination of “Stretch” IRAs

Beneficiaries are now required to withdrawal all funds from inherited IRAs within 10 years and pay the tax liabilities. Some beneficiaries that are excluded from this rule are surviving spouses, minors, disabled individuals, and individuals who are within 10 years of age of the account owner.

Long-Term Part Time Employees: Expansion of Plan Eligibility (Plan Years Beginning after Dec. 31, 2020)

Employees who work 500 hours or more during any consecutive three-year period will now be eligible to participate in their company’s retirement plan. Each 12-month period for which the employee has worked 500 hours will now be counted as a year of service for vesting purposes. 401(k) plans must maintain a dual eligibility requirement, either completing one year of service, defined as 1,000 hours, or three consecutive years where the employee completes at least 500 hours of service. Should the employee only fall under the three consecutive years of service rule, the employer can exclude employees from nondiscrimination and coverage testing / top heavy rules, employer contributions, and requiring the employee to be 21 years old to enroll in the plan.

Penalty Free Withdrawals – Birth or Adoption

Participants may withdrawal funds (maximum $5,000 per birth/adoption) from their employer sponsored plan, traditional IRA for a period of one year following the birth or child adoption. This legislation is applicable to child adoption, under the circumstance that the individual is under age 18 or they are physically/mentally incapable of supporting themselves. For the withdrawal, it is not subject to the 10% pre-mature distribution penalty, federal 20% mandatory withholding, or the Special Tax Notice. Without regard to the 60-day limit, which is applicable to rollovers, the withdrawal can be repaid into the account at a future date.

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Modifications to Plan Administration

An employer may now adopt a qualified retirement plan after the close of the taxable year but must do so before the due date of the employer's tax return.

Age Increase for Required Minimum Distribution

The age for Required Minimum Distributions has increased from 70 ½ to age 72. This RMD age increase is applicable to individuals who attain age 70 ½ after December 31, 2019.

In-Service Withdrawals – Governmental 457(b) and Pension Plans

The age for an in-service withdrawal has decreased from 70 ½ to age 59 ½.

Automatic Enrollment & Escalation

For plans such as a 401(k) or ERISA 403(b) using a Qualified Automatic Contribution Arrangement, the automatic escalation feature has increased from 10% to 15% for years after the first plan year that the employee is automatically enrolled.

The SECURE Act of 2019 will certainly make a major impact on the U.S. retirement system, encouraging employers to establish retirement plans for their employees, while also providing incentives for individuals to save more to better prepare themselves for retirement.