Armstrong Teasdale

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NEW SECURE ACT MAKES CHANGES FOR EMPLOYER-SPONSORED PLANS

Late in 2019, the "Setting Every Community Up for Retirement Enhancement Act" (the SECURE Act) was signed into law as part of the year-end consolidated spending bills. The SECURE Act is intended to expand benefits for retirement savings and provide administrative improvements. Employers that sponsor retirement plans in 2020 should be aware of the SECURE Act's changes to ERISA and the Internal Revenue Code as outlined below. The changes that are most relevant to employers generally apply after 2020; however, certain relevant provisions were effective Jan. 1, 2020, and others apply retroactively.

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NOTABLE RETIREMENT PLAN CHANGES EFFECTIVE IN 2020.

- Required Minimum Distribution (RMD) changes (effective Jan. 1, 2020).
    - Increased RMD Age from 70½ to 72. Under prior law, an employer-sponsored retirement plan was required to begin distributions to a non-actively employed participant by April 1 of the year after the participant reaches age 70½. For participants who reach age 70½ on or after Jan. 1, 2020, the SECURE Act delays when participants must begin receiving required minimum distributions from age 70½ to 72.
    - Limits "stretch" RMDs. The SECURE Act makes changes to certain inherited accounts. It requires certain non-spouse designated beneficiaries to withdraw the entire inherited interest within 10 years after the participant's death. Notably, this change will not apply to surviving spouses, a minor child, a disabled or chronically ill person, or any other designated beneficiary who is not more than 10 years younger than the participant.
- No retirement plan loans through a credit card. Any retirement plan loans made on or after Dec. 20, 2019, through the use of a credit card (or similar arrangement) will be deemed a distribution. If an employer offers this type of arrangement in a retirement plan, the employer should take a fresh look at the arrangement as soon as possible.

GOOD NEWS FOR HEALTH PLAN SPONSORS.

- "Cadillac" tax repeal. As part of the consolidated year-end spending bills, the 40% excise tax on high-cost "Cadillac" employer-sponsored health coverage was repealed and will not apply (as originally scheduled) on Jan. 1, 2020, or on a delayed basis.

QUALIFIED PLAN DISTRIBUTIONS FOR BIRTH AND ADOPTION EXPENSES.

- Optional Birth or Adoption Distributions. Beginning Jan. 1, 2020, employer-sponsored plans may elect to permit distributions of up to $5,000 for qualified child birth or adoption expenses. Under the SECURE Act, such distributions will not be subject to the 10% early withdrawal tax and are available to participants of all ages. Qualified birth or adoption distributions may be recontributed by an employee, subject to restrictions. However, before offering this type of distribution, a plan sponsor should consider whether the distribution will become a protected benefit.

NOTABLE RETIREMENT PLAN CHANGES AFTER 2020.

- Long-term, part-time employee eligibility. For plan years beginning after Dec. 31, 2020, long-term, part-time workers who work at least 500 hours a year, for at least three consecutive years, and who are age 21 by the end of the three years, must be offered the opportunity to contribute to their employer's plan. However, employers may exclude from nondiscrimination and coverage testing employees who become eligible through this provision.
- Lifetime income disclosures.
    - Pension benefit statements will need to include disclosures about lifetime income.
    - More details, as well as a model lifetime income disclosure, are expected from the Department of Labor in 2020.

OTHER OPTIONAL AND MISCELLANEOUS RETIREMENT PLAN CHANGES.

- Increases automatic escalation cap for those automatically enrolled in certain qualified automatic contribution arrangement safe harbor plans from 10% to 15% of compensation.
- Eliminates the annual safe harbor notice requirement for a safe harbor 401(k) plan that provides a nonelective contribution and meets certain conditions.

- Creates a new, open, multiple employer (pooled) option for employer retirement plans to potentially reduce fiduciary exposure.
- Provides relief for closed defined benefit plans from certain nondiscrimination testing.
- Permits in-service distributions at age 59½ for defined benefit pension and money purchase pension plans (reduced from age 62).
- Consolidates annual reporting obligations on Forms 5500 for similar plans.
- Increases penalties for failing to file tax returns, Forms 5500, annual registration statement, and other filing penalties.
- Provides additional relief and incentives for small employers, 403(b) plans and church plans, as well as changes to law specifically applicable to plans for local newspapers, firefighters, emergency personnel or miners.

AMENDMENT DEADLINES.

- Plan sponsors should be aware of the following SECURE Act amendment deadlines:

    - By the last day of the plan year that begins in 2024, governmental and collectively bargained plans must be amended to reflect the SECURE Act changes.
    - By the last day of the plan year that begins in 2022, for most employers, plan documents must be amended to reflect the SECURE Act changes.

NEXT STEPS.

- Work with administrators of qualified retirement plans to implement changes required or available in 2020.
- Start planning for changes effective in 2021 and beyond that affect plan administration.