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SECURE Act of 2019: Changes Effective January 1, 2020

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On December 20, 2019, President Donald Trump signed into law the Setting Every Community Up for Retirement Enhancement (SECURE) Act.

Although more guidance will be forthcoming from the IRS and DOL on the SECURE Act provisions, **employers should be aware that some changes impact 401(k) and 403(b) plans as early as January 1, 2020**.

Some of the SECURE Act changes effective January 1, 2020 include:

- For participants attaining the age of seventy and one-half (70½) after December 31, 2019, minimum required distributions may be delayed until age seventy-two (72).
- Distributions (up to $5,000) made after December 31, 2019 for expenses related to the birth of a child or child adoption, are not subject to ten percent (10%) penalty and can be repaid to the plan at a later date.
- “Stretch IRAs” will be limited distributions to non-spouse beneficiaries and must generally be completed within ten (10) years of the Participant’s death.
- The payout period for designated beneficiaries depends on the beneficiary’s relationship to the participant (i.e. a surviving spouse or non-spouse), age (e.g. minor child or not; no more than ten (10) years younger than the participant), and disability (e.g. an individual with or without disability or chronical illness). The answer to these questions will determine whether the payout can be stretched over the beneficiary’s life or must be completed within ten (10) years of the participant’s death.
- There is no age limit on contributions to traditional IRAs.

Changes that will become effective at a later date include:

- Small employers will be able to join pooled plans maintained by mutual fund or insurance companies in order to reduce administrative costs and expand available investment options. The pooled plan files the Form 5500 annual report and shoulders fiduciary responsibility for investments.
- The Act includes Credits for small employer pension plan startup costs (up to $5,000) and a small employer automatic enrollment credit.
- Part-time employees with at least five hundred (500) hours of service for three (3) consecutive years will be able to participate in 401(k) plans.
- Traditional 401(k) plans (except for 401(k) matching contribution safe harbor plans) may be amended to become non-elective safe harbor plans any time during the year (with some limitations for amendments less than thirty-one (31) days prior to the plan year-end).
- Automatic enrollment contributions for 401(k) plans may be increased from ten percent (10%) to fifteen percent (15%). Defined contribution plans will be required to provide lifetime income illustrations on participant statements at least annually.
- Penalties for late filings and nonfilers of tax returns and notices are increased.

- Frozen closed defined benefit plans will have less stringent nondiscrimination testing requirements allowing aggregations with defined contribution plans for testing purposes. Upon termination of 403(b) plans, custodians may distribute individual custodial accounts in-kind to participant's custodial accounts.

Even though the deadline for amending plans is not until the end of 2022 (for governmental plans and collectively bargained plans), employers must generally operate their plans in compliance with the new rules as of January 1, 2020.

For more details on the SECURE Act and its application, please contact Nadia Havard at 814-459-2800.

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Nadia A. Havard concentrates her practice in all areas of qualified and nonqualified retirement plans and employee benefits; transfer taxes; fiduciary income tax and trust administration; business; as well as estate planning and administration. She also helps nonprofits obtain and maintain their tax-exempt status.

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