



Plan Administration – A SECURE and CARES Act Reminder

As described in our series of articles at the beginning of the year, the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act makes a variety of changes affecting qualified retirement plan administration. Some of these changes were effective upon enactment on December 20, 2019, and others were effective on and after January 1, 2020. With the turmoil subsequently caused by the COVID-19 pandemic and passage of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, however, one significant SECURE Act change that is effective on and after January 1, 2021, may have been overlooked.

The SECURE Act requires 401(k) plans that currently exclude part-time employees to expand eligibility for certain long-term part-timers. Part-time employees who meet the plan’s minimum age requirement must be permitted to participate in the plan’s salary deferral portion if they complete either: (1) a one-year-service requirement (with the 1,000-hour rule); or (2) at least 500 hours of service for three consecutive eligibility computation periods.

While plan sponsors are not required to take into account 12-month periods beginning before January 1, 2021, in determining whether part-time employees satisfy these eligibility requirements, they are required to implement administrative procedures by the beginning of 2021 to determine whether such employees satisfy the new requirements. These eligibility changes will increase administrative complexity, may increase administration costs, and present additional risk for administrative errors. Thus, plan sponsors may want to consider the advantages (and disadvantages) of amending the plan to eliminate hours-based eligibility criteria for all employees.

This SECURE Act eligibility mandate applies only to salary deferral contributions. However, plan sponsors also may want to make part-time employees who satisfy the new criteria eligible for any employer contributions, in order to avoid administering dual eligibility rules. Sponsors also must determine whether part-time employees will be excluded from nondiscrimination and coverage testing (as permitted by the SECURE Act).

In addition to this fast-approaching SECURE Act change, plan sponsors were required (in some cases) to make impromptu decisions regarding whether to implement any of the distribution options made available to their defined contribution plan participants under the CARES Act. While many sponsors made (and are continuing to make) affirmative decisions regarding which distribution options to implement, others may not be aware that their record keepers already implemented some or all of the CARES Act options through a “default” election process.

Employers generally have until the end of the plan year beginning on or after January 1, 2022, to adopt plan amendments for any SECURE or CARES Act changes. However, we encourage employers to review their plan’s administrative procedures to determine if (and how) changes under the SECURE and CARES Acts were implemented. This plan administration assessment will: (1) ensure that plan sponsors are aware of how their plans are being administered; (2) inform plan sponsors of necessary plan amendments; and (3) determine whether plans are being operated in compliance with their terms.

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