Year-End Spending Bill Includes Significant Employee Benefit Plan Changes

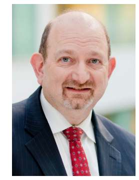
President Trump has signed into law the Further Consolidated Appropriations Act of 2020. The act contains two significant developments for employee benefit plans, (1) the passage of the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) and (2) the repeal of several health insurance related taxes enacted as part of the Patient Protection and Affordable Care Act (the ACA).

The SECURE Act contains the largest number of changes to qualified retirement plans, such as 401(k) and 403(b) plans, in over a decade and is set to significantly change the retirement marketplace. Some of the key changes to employee benefit plans are as follows:

- Easing the restrictions on unrelated companies joining together to form "multiple employer" plans in order to allow small employers the opportunity to band together to create economies of scale for retirement plan investments and fees. We are expecting this provision to significantly alter the small 401(k) plan marketplace.
- Requiring employers maintaining tax-qualified retirement plans to allow part-time employees with three consecutive years with at least 500 hours of service to participate in the plan if they are not otherwise excluded from plan participation effective for plan years beginning on or after December 31, 2021.
- Raising the age in which retirement plan participants must begin receiving required minimum distributions from age 70½ to 72 for participants who have not attained age 70½ by December 31, 2019.
- Modifying required minimum distributions from retirement plans and IRAs to require that any account inherited by a non-spouse beneficiary must be distributed by the end of the tenth calendar year following the participant's (or IRA owner's) death.
- Repealing the highly unpopular 40 percent excise tax on generous employer provided health insurance, known as the "Cadillac tax" that was put in place by the Patient Protection and Affordable Care Act ("ACA"). The Cadillac tax has been delayed twice and had been scheduled to go into effect in 2022. The bill also repeals the 2.3 percent tax on medical devices, which went into effect with the ACA, was suspended in 2016, and would have otherwise gone back into effect in 2020.
- Requiring 401(k), 403(b), and 457(b) plan benefit statements illustrate the amount of monthly payments those plans would provide if the participant annuitized his or her benefit.
- Encouraging defined contribution retirement plan sponsors to allow participants to annuitize their benefit into lifetime income by providing a fiduciary safe harbor for the selection of annuity providers and allowing participants to direct plan-to-plan transfers of annuity contracts into other defined contribution plans.
- Allowing penalty-free hardship withdrawals from 401(k) and 403(b) plans on account of any qualified birth or adoption.
- Prohibiting retirement plan loans to be made through credit cards and debit cards.
- Extending significant pension funding relief for community newspapers that are family-owned, non-publicly traded, independent newspapers.
- Increasing the tax credit for small employers introducing new retirement plans from the current cap of $500 to $5,000. Small employers that add automatic enrollment to their 401(k) or 403(b) plan would also be eligible for an additional $500 credit.

The SECURE Act will require formal plan amendments to be made to retirement plan documents before the last day of the first plan year beginning on or after January 1, 2022.

It is important for employers to begin evaluating the effects of the SECURE Act on their retirement



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plans as soon as possible. Keep an eye on Cozen O'Connor's HR Headaches blog for more in-depth commentary on the key changes made to employee benefit plans.

Contact any member of Cozen O'Connor's Employee Benefits & Executive Compensation team with any questions you have.