SECURE ACT

The SECURE Act was enacted as part of the "Further Consolidated Appropriations Act" signed into law at the end of 2019. It includes a number of important changes to the Pension Laws. (SECURE stands for "Setting Every Community Up for Retirement Enhancement.")

Required Minimum Distributions (RMD)

Not surprisingly, the changes that have received the most media attention have been in connection with Required Minimum Distributions ("RMD's"), the rules that require that withdrawals from tax-deferred retirement accounts (i.e., 401(k)'s and IRA's) begin at specified ages. For as long as the RMD rules have been in place, the required beginning date has been the year in which you turn age 70 ½. In a positive move for taxpayers, the SECURE Act will now base the beginning date age on age 72, giving some additional time to keep retirement accounts fully tax-deferred. The change is effective for anyone turning age 70 ½ after 12/31/2019.

Therefore, if your birthday is 7/1/1949 or after, you can take advantage of the new rules. However, if your birthday is 6/30/1949 or earlier, you still must receive your RMD distributions under the prior (age 70 ½) guidelines.

As is quite often the case, where the government giveth, the government also taketh away. In the case of the death of an account holder, prior law allowed for non-spouse beneficiaries to receive the minimum distributions over their own life expectancy. The SECURE Act changes the rules so that in most cases, a non-spouse beneficiary must withdraw the full account within 10 years, eliminating "stretch IRAs." Depending on the age of the non-spouse beneficiary, this could result in a large increase in taxes compared to the old rules. The new rule applies to non-spouse beneficiaries of account holders who die after 12/31/2019.

Another significant change in connection with IRA accounts allows individuals over age 70 ½ to make non-Roth IRA contributions. However, any such deductible contribution will reduce the IRA Charitable Distribution Exclusion.

Adoption of a New Plan and Converting of an Existing Plan

When an employer is deciding to adopt a new retirement plan, one of the things that always had to be kept in mind was that it had to be started by the end of the year to be active for that year. That meant that a Plan document needed to be in place and at least a minimal deposit made by December 31. The SECURE Act changes this by extending the deadline for adopting a Plan to the due date of the employer's tax return. This enables an employer and its advisers the benefit of being able to review full-year figures before making the decision as to whether or not to establish a Plan.

In an effort to encourage employers to set up new Plans, the small employer "Start-up Credit" has been increased from $500 to the greater of (1) $500 or (2) $250 per non-highly compensated employee who is eligible to participate or $5,000, whichever is less. The credit may be applied for three years.

Another area where employers sometimes want more time to make a decision is with regard to adopting "Safe Harbor" provisions. At some point during a year, it may become evident that the normal 401(k) "non-discrimination" testing results are not going to be favorable and that the adoption of a 3% Safe Harbor provision would provide a better outcome. However, under the existing rules it was often too late in the year to make the change. The SECURE Act provides two new options for such an employer. First, a Plan may convert to a 3% Safe Harbor up to 30 days prior to the end of the plan year. Alternatively, a Plan may also convert after this deadline (in fact, as late as 12 months after the end of the plan year) by adopting a Safe Harbor with a 4% contribution.

Miscellaneous 401(k) Provisions

In one of the more unusual provision changes, 401(k) Plans will have to allow "long-time part-time employees" the ability to make Salary Reduction contributions. No employer contributions (even Safe Harbor) will be necessary, only the ability for such part-timers to contribute their own funds to the 401(k). Also, that individual would not be included in 401(k) testing. What constitutes a long-time part-time employee? An employee who works at least 500 hours in three consecutive years. This may be a bit of a problem for some employers to track, but there is plenty of time to prepare. The law states that the counting of the 500-hour periods don't start until the year 2021, which means the earliest an employee could begin participation under these rules is 2024.

Participants may now request withdrawals from their retirement accounts for birth or adoption expenses. Unlike Hardship distributions, these are not subject to the 10% early penalty tax for amounts withdrawn prior to age 59 ½. There are also provisions for the eventual repayment of the funds to the Plan, if desired.

The annual "Safe Harbor Notice" that such Plans are required to distribute to participants is no longer required. It does provide useful information, so it still may be a good idea to include with the other annual notices provided at that time.

And finally…

Sponsors of defined contribution plans – that includes 401(k)s – will be required to provide participants with an estimate annually of the monthly income that one could receive in retirement if their current account balance as used to purchase an annuity. The DOL still must release additional guidance on this change, so the requirement won't be effective until 12 months after such guidance is issued.

For Pension Plans, or those 401(k) Profit Sharing Plans that include old Pension monies, the in-service distribution age may be reduced to 59 ½, keeping in line with age requirement for other non-Pension Plans.