Top 10 Ways the New SECURE Act Expands Retirement Options for Employers

Legislation known as the "SECURE Act" -- passed as part of the year-end spending package adopted by the U.S. Congress and signed into law shortly thereafter – provides a host of expanded options for employers that are offering qualified retirement plans.

The intent of the SECURE Act (of which the full name is the Setting Every Community Up for Retirement Enhancement Act) is to facilitate improved retirement savings for individuals.

- The Act provides improved **incentives to encourage employers without plans to adopt plans**.

- The Act provides new **means by which retirement savings can be enhanced within existing plans**.

Here are 10 ways in which the new Act will expand the options for employers who sponsor retirement and profit-sharing plans:

1. Enhanced Incentives for Employers. Employers who adopt retirement plans can obtain larger tax credits on their federal tax return. The credit for adopting a new retirement plan can extend up to $5,000 whereas the prior credit maxed out at $500. The credit is based on the number of "non-highly compensated employees" who will be eligible to participate in the plan. Owners (even if not actually "highly compensated") will nevertheless be placed in the "highly compensated" category.

    - For new plans with two or fewer new eligible non-highly compensated employees, the credit is $500. If more than two are eligible, the credit increases by $250 per additional eligible employee up to a maximum of $5,000.

    - In addition, employers can obtain another $500 credit for including automatic enrollment provisions in the plan. Thus, the total possible credit is $5,500.

    - The improved credits are available for tax years beginning after December 31, 2019.

2. Multi-Employer Plans. Prior law strictly restricted the ability of employers to join into "multi-employer plans" unless there was some form of connection among the participating employers. The Act eliminates the restrictions, thereby permitting unrelated employers to join in a "pooled" plan offered by a plan provider. The potential for enhanced access to multi-employer plans ought to permit greater access to plan options for very small employers who might not otherwise find it economically advantageous to adopt a plan on their own.

- The Act also eliminates the so-called “one bad apple” rule that made multi-employer plans less attractive to employers by potentially subjecting an entire plan to sanctions due to the actions of just one participant.

- Multi-employer plans without restrictions become available under the Act for plan years beginning after December 31, 2020.

3. Retroactive Adoption. The Act permits employers to adopt a plan prior to the due date of their federal tax return (including extensions) and treat the plan as having been adopted as of the last day of the tax year. The change permits employers to assess their tax situation and adopt a plan that is advantageous. The Act also permits employees to receive contributions for the earlier year.

    - The ability to adopt a retroactive plan prior to the filing of the tax return will be permitted for plans adopted for tax years beginning after December 31, 2019.

4. Later Amendment. The Act also permits employers to amend their plan to adopt the nonelective contribution safe harbor at any time during the plan year. Such an amendment to adopt a nonelective contribution safe harbor of at least 3 percent of compensation can be adopted any time up to 30 days before the end of the plan year. An amendment can be adopted even later (even into the following plan year) if the amendment provides for at least 4 percent of compensation as the nonelective contribution.

    - The ability to make such an amendment will apply for plan years beginning after December 31, 2019.

5. Lifetime Income Safe Harbor & Disclosure. One of the goals of the Act is to enhance the ability of employees to choose “lifetime income” options (typically annuities) within “defined contribution” plans (most commonly “401(k)” plans). Lifetime income is more common in “defined benefit” or “pension” plans. One stumbling block to adoption of lifetime income options under defined contribution plans is the employer’s fiduciary duty with respect to the selection of annuity providers. Since the obligation will extend to the participant’s lifetime, employers were reluctant to offer lifetime options due to the potential liability if the provider failed. The Act adopts a safe harbor that protects the employer from liability for providing lifetime income options.

    - The Act also requires employers to provide participants (at least once per 12 months) a “lifetime income disclosure.” The disclosure illustrates the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams.

    - The safe harbor for lifetime income took effect immediately. The disclosure requirement will take effect once the Department of Labor has developed rules and a model disclosure.

6. Increase in Automatic Enrollment Escalation Cap. Current law provides a safe harbor from certain compliance testing if the plan includes a "qualified automatic contribution arrangement" or "QACA." The QACA provision permits gradual escalation of the amounts contributed under the plan up to 10 percent of compensation. Under the Act, the cap will be increased to 15 percent. Employers retain the option to set the schedule and cap consistent with the safe harbor.

    - The increase in the automatic enrollment cap can be adopted for plan years beginning after December 31, 2019.

7. Coverage of Long-Term Part-Time Employees. Current law allows employers to exclude part-time employees by setting an eligibility limit no less than 1,000 hours worked per plan year. The Act adds a second lower boundary for eligibility for part-time workers who work at least 500 hours per plan year, but for a period of three consecutive years. Employers will be required to allow part-time employees who meet the threshold to participate in the plan.

    - The expansion to cover long-term part-time employees will take effect for plan years beginning after December 31, 2020.

    - Calculation of the three-year eligibility period will begin on January 1, 2021.

    - To be eligible, employees must be age 21 by the end of the third 12-month period upon which eligibility is based.

    - Employees who later become full-time employees (meeting the 1,000-hour threshold) cease to come under the special provisions for part-time employees once the higher threshold is met.

    - Employees who are eligible to participate solely because of the long-term part-time rule can be excluded from certain compliance testing (nondiscrimination and top-heavy testing).

    - The special rules for long-term part-time employees do not apply to employers who have collectively bargained plans.

8. Required Minimum Distributions Begin Later in Life. The Act moves the starting age for required minimum distributions from plan accounts from 70-1/2 to 72. Plan participants will be able to build up account balances for a longer period before withdrawals must begin. The amendment is intended to take into account longer life expectancies compared to the adoption of the original age requirement in the 1960s.

    - Participants who turn 70-1/2 in 2020 need not make required minimum distributions until the year in which they turn 72. Participants who turned 70-1/2 in 2019 are subject to the prior rules.

9. Repeal of Safe Harbor Notice Requirement. The Act repeals the requirement that plan sponsors provide an annual notice to participants regarding nonelective contributions. Employers still must allow employees to make or change an election at least once per plan year.

    - The repeal applies to plan years beginning after December 31, 2019

10. Combined 5500s. The Act allows similar plans to file a consolidated report on Form 5500. Plans eligible for consolidated reporting must be defined contribution plans with the same trustee, the same fiduciary or named fiduciaries, the same plan administrator, the same plan year, and the same investment options.

    - The consolidated 5500 will be available upon adoption of applicable regulations, but no later than plan years beginning after December 31, 2021.

Employers without plans should consider whether the new options make adoption of a plan more attractive. Employers with plans should consider whether the new options make plan amendments advisable.

Vandenack Weaver attorneys can assist in your analysis.