Employee Benefits Report

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SECURE Act's Effect on Retirement Plans

Here's a review of the changes that affect small employers and some large ones.

Most of the provisions of the new Setting Every Community Up For Retirement Enhancement Act (SECURE) went into effect Jan. 1, 2020. Part of a federal government spending package, SECURE is considered the broadest piece of retirement legislation passed in 13 years. The new law provides more incentives for individuals to save for retirement and for employers to offer retirement plans.

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Basic Steps for Dealing with a Virus Outbreak

After the Coronavirus outbreak in Wuhan, China, spread into other countries, many employers began taking precautions to avoid an outbreak in their workplaces.

The Novel Coronavirus (also called COVID-19) is an upper-respiratory disease that presents itself as a fever with symptoms of a respiratory illness. The incubation period appears to be between one to 14 days — a period when carriers can be contagious.

While Coronavirus or similar outbreaks may not reach your area, it's prudent to have policies in place in case the virus threatens the health of your employees:

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The Effect on Employers

The following changes affect small employers and some large employers:

Part-time workers gain access to 401(k) plans: Formerly, only full-time employees were allowed to participate in 401(k) retirement savings plans. SECURE allows long-term, part-time workers to participate in 401(k) plans if they have worked more than 1,000 hours in one year, or 500 hours a year for three consecutive years.

Small business gets tax credit for starting retirement plans: Employers with up to 100 employees can receive a minimum tax credit of $500 and maximum credit of $5,000 for starting a retirement plan. The credit is good for the three-year period beginning after Dec. 31, 2019, and applies to SEP, SIMPLE, 401(k) and profit sharing types of plans. An additional credit of up to $500 is available for retirement plans that include automatic enrollment.

Easier to form multiple employer plans: Beginning in 2021, employers from different industries can open a retirement plan by using an open multiple employer plan (MEP). This allows a group of small employers to pool their buying power in order to obtain low-cost, high-quality retirement plans. SECURE also eliminates the Internal Revenue Service's (IRS) "one bad apple" rule, which penalizes all employers participating in an MEP if one employer fails to satisfy the MEP tax qualification rules.

Easier to offer annuities: Annuities are insurance policies that convert retirement savings into income. While pension plans commonly use annuities, they have not been as popular as 401(k)s. With SECURE, some of the fiduciary requirements used to vet companies and products before they can be included in a plan have been removed. This makes it easier for employers to let employees convert their savings into guaranteed lifetime income through annuities. The new rules also protect employers from being sued if the plan's insurer doesn't make the annuity payments.

Raises the cap for auto enrollment: Employers who auto enroll employees into retirement plans now can gradually withhold as much as 15 percent of an employee's salary — up from 10 percent.

The Effect on Individuals

The following changes affect individuals who have employer-sponsored plans or Individual Retirement Accounts (IRAs):

Stretch IRAs eliminated: It's no longer legal to have a "Stretch" IRA. Previously, if you named anyone other than your spouse as the beneficiary of your IRA, that beneficiary could choose to let the money in the IRA grow tax-deferred and pass the remaining amount to his or her children. The new legislation requires non-spouse beneficiaries to withdraw all the money in the IRA within 10 years of the IRA holder's death. Exceptions to the rule include assets left to a surviving spouse; a minor child; a disabled or chronically ill beneficiary; and beneficiaries who are less than 10 years younger than the original IRA owner or 401(k) participant.

Required Minimum Distribution (RMD) age changed: Previously, individuals were required to take distributions from their IRAs or 401(k)s at age 70½. Under the new law, individuals who are not 70½ at the end of 2019 can now wait until age 72 to begin taking distributions. This allows investors additional time to allow their retirement accounts to grow without being depleted by distributions and taxes. If you turned age 70½ in 2019 and have already begun taking your RMDs, experts recommend you continue to take your RMDs. A tax advisor can tell you if the IRS provides further guidance regarding 2020 distributions.

Longer time to make IRA contributions: Individuals can now contribute to an IRA af-

- **Instill confidence by announcing that the situation is being monitored. Alert employees impacted by a virus outbreak, but do not feel you must be the expert about the disease. To avoid misinformation, it's best to direct them to information provided by government agencies such as the Centers for Disease Control and Prevention.**
- **Encourage all employees to use their paid sick leave and paid time off if they feel ill. Managers and supervisors should be trained to send employees home if they are sick.**
- **Consider temporarily suspending travel directly to an infected region. The Occupational Safety and Health Act allows employees to refuse to work when there is a reasonable belief there is risk of imminent death or serious injury.**

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ter age 70½, the same as they can with 401(k)s and Roth IRAs — as long as they are still working. This change doesn't apply for tax year 2019. It will be effective for tax year 2020 contributions and individuals can make their tax year 2020 contribution until April 15, 2021.

More time for Roth Conversions: A Roth IRA, unlike a traditional IRA, allows tax-free withdrawals as long as the individual meets certain requirements. Plus, there are no RMDs. The goal of a Roth conversion is to convert taxable money in an IRA into a Roth IRA at lower tax rates today than are expected in the future. While individuals can do Roth conversions after they start RMDs, the process is harder. Therefore, individuals now have an additional two years to make Roth IRA conversions without having to worry about the impact of required distributions.

Some early withdrawals allowed: SECURE allows investors to make an early withdrawal of up to $5,000 from a retirement account without penalty in the event of the birth of a child or an adoption. Formerly there was a 10 percent penalty for early withdrawals. ■

ERISA Compliance for Small and Large Employers

Despite its name, Employee Retirement Income Securities Act (ERISA) regulations apply not only to retirement plans, but to all "welfare" plans, including health benefits.

ERISA became law in 1974 and is intended to safeguard participants' pension and welfare benefits. With the passage of the Affordable Care Act in 2010, more focus is directed to both health and welfare benefits.

Benefits that are subject to ERISA include employer-sponsored welfare plans such as:

- Medical, surgical or hospital care
- Sickness, accident, disability or death benefits
- Unemployment benefits
- Vacation benefits
- Apprenticeship and training programs
- Day care centers
- Scholarship funds
- Prepaid legal services
- Holiday or severance pay
- Retirement plans

ERISA regulations apply to any employer who offers benefits for two or more employees. Organizations exempt from ERISA include churches and government entities, as well as employers who offer plans maintained to comply with workers' compensation or disability that fall under a statutory exemption status.

Small and Large Employer Responsibilities

Regardless of size, employers who offer benefits have three primary administrative requirements under ERISA. Much of this work usually is handled by the plan administrator:

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- The U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) require plans to submit certain documents including a summary plan description that describes the coverage levels and claims procedures of your plan. Plans also are required to report when modifications (such as increased or decreased coverage, for example) to the plan have been made.
- ERISA requires plan administrators share information with the plan participants and the DOL upon request. Plan participants can get a wide array of information ranging from coverage levels to financial information.
  - For welfare plans, it's easiest to distribute the information at orientation for new hires.
  - Be aware that the requirements for retirement plans are different and can have an impact on a long list of retirement plan features including fiduciary responsibility and reporting and disclosure requirements.
- Plan administrators must establish a claims procedure to process claims for benefits and provide information to a participant when the participant's claim has been denied.

Small Employers

The DOL requires small employers to provide a financial statement that describes the plan's financial condition. Small employer plans can fulfill that obligation by filing a DOL Form 5500 (or Form 5500-SF) with attachments.

Small employers who have a 401(k) program (or other retirement plan) that is insured or self-insured must fill out a Form 5500. Form 5500 is a report that businesses must file annually so as to provide the IRS and DOL details about the company's employee benefit plans, including information about investments, operations and conditions of the plan.

Large Employers

Employers with 100 covered participants at the start of a plan year must fill out Form 5500.

Penalties

The Employee Benefits Security Administration, an agency of the DOL, enforces ERISA regulations. Here are some of the penalties.

- Failure to provide a summary plan description (SPD) of your benefits can cost an employer $1,176 per failure.
- Failure to furnish information requested by the DOL penalty is up to $159 per day.
- Failure to file the plan's annual report (5500 filing) could cost an employer $2,233 per day. ■

How to Conduct a COBRA Self Audit

To help avoid an audit, or to be prepared in case an audit is ordered, it's best to conduct a self audit.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) offers employees who lose health coverage due to certain life events an opportunity to temporarily continue their coverage. To ensure that employers are following the correct COBRA administration practices, policies and procedures, the Internal Revenue Service (IRS) may conduct an audit of an employer's program. To help avoid an audit, or to be prepared in case an audit is ordered, it's best to conduct a self audit.

COBRA guarantees that employees, who were covered under an employer-sponsored group health plan (medical, dental and vision), and their families, will not lose coverage due to a qualifying event. A qualifying event for an employee could include retirement, termination of employment (other than by reason of gross misconduct), reduction in hours, death or entitlement to Medicare benefits. A qualifying event for family members could include divorce or legal separation from the covered employee or loss of dependent child status. Coverage is generally continued for 18 to 36 months, depending on the circumstances.

COBRA rules apply to employers who have 20 or more full-time employees or a combination of full- and part-time employees on more than 50 percent of typical business days in the prior year. COBRA rights are offered to employees, their spouses and depen-

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dent children. To determine whether you technically have 20 employees, experts recommend counting each part-time employee as a fraction of a full-time employee and adding those part-time hours to get a total, then dividing by the number of hours required to be deemed full time (usually 30 hours). Some states, however, have laws that are similar to COBRA and include companies with fewer than 20 employees. Your state labor agency will be able to advise you of these rules.

Checklist

It can be a challenge to stay in compliance with COBRA. The law requires an extensive knowledge of COBRA rules, as well as managing time-intensive manual processes; dealing with data errors; and staying current with mandatory deadlines.

Failing to comply with the rules can be costly. The IRS imposes an excise tax of $100 per qualified beneficiary, but not more than $200 per family, for each day an employer is in the noncompliance period. This period begins on the day of failure and ends on the day of correction, or, if earlier, six months after the last day of the applicable COBRA maximum coverage period.

For instance, if you failed to tell three families they were eligible for COBRA coverage and the maximum coverage period is 18 months, you could face a potential excise tax penalty of $438,000 ($200 per family multiplied by three families for 24 months (18 months plus six months).

Additionally, employer's may be subject to statutory penalties of $110/day under ERISA,

as well as civil lawsuits and attorney's fees.

Here is a checklist of items to keep on file to be sure you are prepared in the event of a COBRA audit:

- Copy of the employer's COBRA coverage procedures manual
- Copies of standard COBRA coverage form letters sent to qualified beneficiaries
- Copy of the employer's internal audit procedures for COBRA coverage
- Copies of all group health care plans
- Details of past or pending lawsuits filed against the employer for failing to provide appropriate COBRA coverage

Here is the information you need to produce if you are being audited:

- Number of qualifying events which occurred during the year being examined.
- How qualified beneficiaries are notified of their COBRA rights.
- How the plan administrator is notified that a qualifying event occurred.
- The election made by qualified beneficiaries to continue health coverage.
- The premium paid by qualified beneficiaries for COBRA coverage.
- Copies of federal and state employment tax returns filed during the current period under examination and the preceding year.
- A list of all individuals affected by a qualifying event (for example, termination, death, etc.) during the current year.
- A list of all individuals covered on the current and preceding years for each plan (this list also must include all qualified beneficiaries).
- Personnel records with information that includes the name and address of each beneficiary and their qualifying event date, reasons for employment termination, etc.
- If the employer is denying coverage due to an employee's gross misconduct, the examiner can check to determine if that employee was denied unemployment benefits for the same reason.

It's always prudent to work with your plan administrator or an employment law attorney if you have questions. ■

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Giving Benefits the Respect They Deserve (and the Law Requires)

If you offer your employees health benefit coverage, your substance abuse and mental health benefits should be comparable to the other medical benefits in your plan.

The Mental Health Parity and Addiction Equity Act (Parity Act) of 2008 is a federal law that requires group health plans and health insurance issuers to offer plans that don't impose more limitations on mental health and substance abuse disorder benefits than on medical and surgical coverage. For instance, a plan cannot put more restrictive visit limits or impose higher cost sharing on mental health treatment than they would on treatment of a physical ailment.

The World Health Organization reports that one in four people in the world will be affected by mental or neurological disorders at some point during their lives. Around 450 million people currently suffer from these conditions, placing mental disorders among the leading causes of ill-health and disability worldwide.

Drug abuse also is a growing problem. The National Survey on Drug Use and Health estimated that 19.7 million American adults (age 12 and older) battled a substance use disorder in 2017. About 38 percent of adults in 2017 battled an illicit drug use disorder.

The Parity Act has been law for more than a decade, but has not been fully implemented or enforced. The Partnership for Drug-Free Kids reports widespread non-compliance with the requirement to cover addiction treatment. The report also asserts that lack of access to effective and affordable treatment contributes to nearly 200 lives lost daily because of overdose.

A bill introduced in 2019 in both houses of Congress would require health plans and insurers to conduct in-depth analyses to ensure that plans are compliant. In addition, the secretaries of both the Department of Health and Human Services and Labor would be allowed to request these analyses if they receive patient complaints that plans are not compliant. ■

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