



Tax Client Alert

SECURE Act Changes Enhance Retirement Plan Savings and Impact Estate Planning for 401(k) and IRA Distributions

Federal legislation including provisions commonly known as the Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act") was enacted by Congress and signed by the President on December 20, 2019. The SECURE Act contains important changes in the federal tax and employee benefit laws governing employer sponsored retirement plans and individual retirement accounts ("IRAs").

SECURE Act changes are intended to encourage more businesses to provide their employees retirement plan savings opportunities. The SECURE Act also changes requirements for the timing of distributions of retirement plan accounts and IRAs to designated beneficiaries in event of death of a plan participant or IRA owner. These changes can have a significant impact on estate planning by an individual who has an employer retirement plan account or IRA.

New Rules Encouraging Employers to Adopt Retirement Plans

Retirement Plan Pooling of Plan Contributions and Assets

The SECURE Act provides that businesses may "pool" assets to provide retirement plan benefits even though they are not commonly owned or operated businesses. These so-called "pooled employer plans" are to be treated as a single plan for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA"). This new rule is effective for plan years beginning after December 31, 2020.

Retirement Plan Start-Up Credit

Under the prior law small business employers could qualify for a nonrefundable income tax credit for qualified expenditures incurred to start a new retirement plan. The SECURE Act increases the amount of this credit, and a further credit is allowed to a small employer that establishes a 401(k) plan containing certain features, such as automatic enrollment. This change is effective for taxable years beginning after December 31, 2019.

Timing of New Retirement Plan Adoption by Employer

The SECURE Act adds flexibility to the process of an employer adopting a new qualified retirement plan. It allows an employer to adopt a plan after the close of a taxable year if it is adopted before the deadline for filing the employer's tax return for the taxable year. This change is effective for taxable years beginning after December 31, 2019.

401(k) Safe Harbor Changes

The SECURE Act changes several rules that apply to nonelective contributions to 401(k) “safe harbor” plans to meet non-discrimination requirements that apply to such plans. The changes are intended to streamline and simplify the use of the safe harbor contribution process for employers and employees. The changes are effective for plan years beginning after December 31, 2019.

Consolidated Form 5500 Annual Plan Reports

The SECURE Act includes provisions directing the Internal Revenue Service and Department of Labor to modify Form 5500 to enable a group of defined contribution plans having certain common features and plan administration to file a consolidated Form 5500. This change is effective for plan years beginning after December 31, 2021.

Frozen Defined Benefit Plan Relief

The SECURE Act provides special relief or exemption from certain Internal Revenue Code plan qualification requirements for a defined benefit plan that is “frozen” as to participation by employees hired after a certain date, if the plan meets certain other requirements. This change is important for employers that have frozen but still maintain a defined benefit plan that continues to cover and benefit highly compensated employees who began participation in the plan before it was frozen. This change is generally effective upon enactment of the SECURE Act, and may be applied to prior years if elected by the employer sponsoring the plan.

Retirement Plan Participation Incentives for Employees

Lifetime Income Reporting for Employees

The SECURE Act provides a change to assist employees with retirement planning. It requires employers sponsoring a profit-sharing or 401(k) plan to provide plan participants an annual estimate of the amount of monthly annuity income the plan assets in the participant’s plan account could produce in retirement. This change is effective as to plan statements furnished to plan participants after the Department of Labor issues guidance on the form of estimates to be provided.

Retirement Plan Distributions Required Beginning Date

The SECURE Act increases the age at which required minimum distributions must begin from 70 ½ to 72. This change is effective for individuals who attain 70 ½ after December 31, 2019.

Employee Withdrawals from Plan for Child Birth or Adoption

The SECURE Act provides that employees who participate in an employer profit sharing or 401(k) plan may take a penalty-free withdrawal of up to \$5,000 from their plan account for expenses related to the birth or adoption of a child for up to one (1) year following the birth or legal adoption. Such distributions may later be recontributed to an applicable eligible retirement plan if certain requirements are met. This change is effective for plan distributions made for these purposes after December 31, 2019.

Long Term Part-Time Employees Participation in 401(k) Plans

The SECURE Act requires that 401(k) plans permit participation in the plan by long-term, part-time employees who work at least 500 hours per year and have attained age twenty-one (21). This change allows the employee to make 401(k) elective deferrals of compensation while not requiring employer contributions for such employees. This change is effective for plan years beginning after December 31, 2020.

401(k) Plan Automatic Enrollment Increase.

The automatic enrollment safe harbor to the 401(k) plan nondiscrimination rules has previously imposed a 10% limit on default automatic contribution rates. The SECURE Act increases this limit to 15% (subject to 10% during the participant's first year of participation). This is effective for plan years beginning after December 31, 2019.

Changed Required Minimum Distribution Rules for IRAs and Defined Contribution Plans Impact Individual Estate Planning

The SECURE Act changes Internal Revenue Code provisions imposing required minimum distributions ("RMDs") for employer defined contribution plan accounts of individual employees, and for individual retirement accounts ("IRAs") owned by an individual.

The change applies to distributions from a plan or IRA in the event an individual dies prior to beginning distributions from the account. The new law could have significant tax effect for surviving designated beneficiaries of an individual plan participant or IRA owner who has a large plan account or IRA balance at the time of death.

The new rule generally provides that all distributions to a designated beneficiary after death of the plan participant or IRA owner must be made by the end of the 10th calendar year following the year of death (new "10-Year Rule"), subject to certain exceptions. Under the new 10-Year Rule, designated beneficiaries, such as children, will no longer be able to "stretch" out the period of time during which they can receive RMDs from a plan account or inherited IRA longer than 10 years, such as using their life expectancy, which has previously been allowed under prior law.

All individuals who have a plan account or IRA and who have designated beneficiaries of it in event of death should review the plan and IRA documents that have previously been signed. This should be done to determine the application and potential effects of the new 10-Year Rule on the plan account or IRA and the designated beneficiaries of it. Changes should be made if needed to best plan and provide for any application of the new 10-Year Rule for RMDs from the account or IRA to the designated beneficiaries in the future.

This change is generally effective for distributions by reason of death of an employee or IRA owner after December 31, 2019.

This change and additional discussion of it is being furnished in [this recent Client Alert](#) published on the GableGotwals website.

Other Employee Benefit Changes Enacted by Congress Affordable Care Act “Cadillac” Health Plan Tax Repeal

The legislation enacted by Congress containing SECURE Act provisions also repeals the excise tax on high-cost employer medical plans, or so-called “Cadillac health plan” tax. This change is effective for taxable years beginning after 2019.

Employer Credit for Paid Family and Medical Leave Extended

The federal income tax credit allowed for employer-paid family and medical leave under certain conditions that was enacted by the Tax Cuts and Jobs Act in 2017, for wages paid in 2018 and 2019, was extended by federal legislation through 2020.

If you have questions about the SECURE Act and other changes in the law involving tax, retirement plans and estate planning, please contact any attorney at GableGotwals you know or those who work in those practice areas named below.

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