HICKS NOTES

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NEW YEAR, NEW LAW
WHAT YOU NEED TO KNOW

Now that 2020 is upon us, we have new rules and regulations that those working in the retirement plan field need to be aware of. The Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law on December 20, 2019. The Act affects qualified retirement plans and IRAs along with other employee benefits. Here are some basics so you are aware of the main issues involved and can communicate them to clients.

SECURE ACT RETIREMENT PLAN CHANGES

RMD AGE RAISED TO 72: Most know that participants in retirement plans need to take a Required Minimum Distribution (RMD) by the April 1st after the year in which they turn 70½ and then by each December 31st thereafter. This amount is calculated based on the December 31st account balance of the prior plan year. The RMD commencement age has been raised to 72. This change applies to both defined benefit plan and defined contribution plans and is effective for those who turn 70½ after December 31, 2019. If you are already taking distributions, you must continue to follow the old law and continue your payments.

POST DEATH RMD STRETCH IS GONE: Under current law, a survivor is allowed to take distributions over their life expectancy. For those currently doing this, they are fine. Any future post death distributions are now capped at 10 years for designated beneficiaries and 5 years for non-designated beneficiaries. There are major EXCEPTIONS; This rule will not apply to a surviving spouse, a minor child, a disabled person, a chronically ill person and any person not more than 10 years younger than the deceased participant. These beneficiaries may continue to spread their payments over their expected life-time except the minor child. Their 10-year period begins after reaching the age of majority. There are open issues as to who is considered a minor child and the definition of disabled, but clarification will be forth coming. These rules are effective for those who die after 2019.

PART TIMERS MAY NOW BE ELGIBLE IN THE FUTURE: Under current law, those who work under 1000 hours a year could be excluded for plan purposes. The Act will require that employees who work at least 500 hours for three consecutive years must be eligible to make 401(k) salary deferrals. They are not required to receive safe harbor or any other employer contributions, and will not be included in the discrimination tests. This new eligibility requirement starts for the 2021 plan year, so the earliest employee could be eligible is 2024. While this sounds like a problem, this will not add additional employer contributions but will probably increase administrative costs due to the tracking and enrollment issues.

NOTICE REQUIREMENTS ARE RELAXED FOR NON-ELECTIVE SAFE HARBOR PLANS: Under current law, 3% non-elective safe harbor plans have to give annual notices to participants by the December 1st prior to the beginning of the next plan year. The Act eliminates the requirement that plan sponsors provide an annual notice. However, the initial notice must still be provided to employees within a reasonable time period before they become eligible.

A 401(k) plan may be amended to be a non-elective safe harbor plan if 1) at any time prior to 30 days before the close of the plan year or 2) on or after the 30th day before the end of the plan year as long as the amendment is made by the close of the following plan year and the non-elective safe harbor contribution is at least 4%. This change is effective for plan years beginning after 2019.

PLAN WITHDRAWALS FOR CHILD BIRTH AND ADOPTIONS: Beginning in 2020, a plan may allow for a penalty free distribution of up to $5,000 per birth or adoption per participant for the 1-year period following the birth or adoption. The withdrawal will not be subject to the IRS 10% premature distribution penalty tax, federal 20% mandatory withholding, the Special Tax Notice, and the direct rollover rules applicable to retirement plans. While still subject to ordinary income tax, this is a way for new parents to access 401(k) accounts without penalty. The $5,000 is per parent per child so both parents could make this withdrawal.

In addition, they may pay back the money to avoid taxes altogether. This new provision will need more guidance on how this is administered as open questions remain on the pay back issue. When does it need to be paid back? Within the same year or in future years? How would this be reported? Bottom line, this is a quick way for parents to get cash if needed.

MEPS AND NOW PEPS: Multiple employer plans (MEPS) generally allow companies to bind together into one master plan. There were issues of one bad apple (an employer not operating their plan correctly) hurting the other plans, and the requirements that the companies have common interests. Closed MEPS are allowed for associations and other multiple employer arrangements. Under the new law, multiple employers may join in a common plan without worrying about the association or the one bad apple rules. These plans will be called POOLED EMPLOYER PLANS or PEPS and must be sponsored by a Pooled Plan Provider. The idea is to bring competition to the small plan market while lowering administrative costs. As a third party administrator, we plan to offer a PEP option, but then show how individual plan design is far superior in most cases. The PEP provisions are effective for the plan year beginning after December 31, 2020.

OTHER PROVISIONS: There are other provisions that also affect plans. **Form 5500 Fines** are dramatically increased for failure to file the forms. The penalty goes from $50 a day up to $15,000 to $250 a day up to $150,000 for missed filings after December 31, 2019. All the more reason to use a qualified plan administrator.

Annuities are required to be reflected on benefit statements showing estimated monthly incomes provided by a joint and survivor annuity and a single life annuity, so participants to have better information for retirement planning. In addition, Fiduciaries are protected when selecting annuities companies from the liability should the annuity company be unable to provide all future benefits.

Automatic enrollment on Qualified Automatic Contribution Arrangements (QACA) is increased from maximum 10% to 15% as the maximum in the second year in which the employee is automatically enrolled. This is not required, but is an option as the realization that participants must save more.

BOTTOM LINE: This new legislation is designed to strengthen the private pension system. Plans will have to be amended to cover these provisions. This is only a quick outline, and more guidance and rulings are expected to clarify this new law. Click here to view a one-hour webinar on the Secure Act presented by VOYA.

As always, we are here to help!