

ca des · schutte

A LIMITED LIABILITY LAW PARTNERSHIP

Impact of the CARES and SECURE Acts on Retirement Planning

**Roger W. Fonseca, Esq.
Cheryl L.M.T. Itagaki, Esq.**

1

ca des · schutte
A LIMITED LIABILITY LAW PARTNERSHIP

CARES Act

2

Required Minimum Distributions ("RMDs")

- Under the SECURE Act:
 - Age at which RMDs are required to begin increased from 70½ to 72
 - Applies to those who had not attained 70½ prior to January 1, 2020
 - Age at which charitable contributions from an IRA are allowed remains at 70½
 - Contributions to IRAs may continue after reaching age for RMDs

3

Required Minimum Distributions ("RMDs")

- Under the CARES Act:
 - Employees may (but are not required to) waive RMDs in 2020
 - Waived RMDs do not have to be made up in subsequent years
 - Death distributions which must be paid over a maximum of 5 or 10 years will be calculated without regard to the year 2020

4

Penalty-free Distributions

- An up to \$100,000 distribution allowed in 2020
 - Free from withholding and the 10% penalty applied for withdrawals prior to age 59½
- Qualified participants are those who:
 - Are diagnosed (or have a spouse or dependent diagnosed) with COVID-19; or
 - Suffered adverse financial consequences due to a virus-related termination, layoff, quarantine, business closure or lack of child care

5

Penalty-free Distributions

- Tax consequences:
 - May be repaid over 3 years tax-free to the same or other eligible retirement plan or IRA
 - If not repaid, may be taxed over 3 years
- Participant certification allowed for:
 - Condition for qualification for distribution; and
 - Proof no other such distribution under this law taken from other plans

6

Plan Loans

- Plans may:
 - Allow qualified participants (as described previously) take a loan in 2020 equal to the lesser of:
 - \$100,000; or
 - 100% of their vested account balance
 - Allow loans to continue after a virus-related termination of employment

7

Plan Loans

- Plans must:
 - Suspend for one year, each payment due between March 27, 2020 and December 31, 2020, for existing loans
 - Interest will still accrue, but the loan term will be extended by the period of suspension without re-amortization

8

Defined Benefit & Cash Balance Plan Relief

- Funding requirements for 2020 may be deferred until January 1, 2021
 - Although interest will accrue from the original due date
- A plan's 2019 funding status may be used to calculate benefit restrictions for plan years which include 2020

9

Defined Benefit & Cash Balance Plan Relief

- Plan sponsors may want to consider a plan freeze or plan amendment if there are:
 - Large asset declines in the market; or
 - Large distributions due to employee terminations

10

Elective Deferrals

- Difference between paid leave, unpaid furlough and outright termination of employment:
 - If on paid leave, elective deferrals continue unless an employee elects otherwise
 - If in an unpaid furlough or termination, elective deferrals cease

11

Plan Amendments & Restatements

- CARES Act Amendments:
 - Plans must operate in accordance with the CARES Act immediately
 - Plans must be amended by the last day of their 2022 plan year
- Restatement Deadlines for the Pension Protection Act extended from:
 - March 31, 2020 to June 30, 2020 for 403(b) plans; and
 - April 30, 2020 to July 31, 2020 for defined benefit and cash balance plans

12

Health Plans & Flex Plans

- High deductible health plans making contributions to health savings accounts need not apply the deductible threshold to telehealth and other remote care services
 - Note such plans are rare in Hawaii for companies with staff due to Hawaii's Prepaid Health Care law
- Flexible spending accounts, cafeteria plans, employee medical reimbursement plans and health savings accounts:
 - No longer require prescriptions to cover over-the-counter drugs
 - May now cover menstrual care products

13

SECURE Act

14

Safe-harbor 401(k) Plans

- Safe-harbor Notices:
 - No longer required for safe-harbor profit-sharing contributions
 - Still required for safe-harbor matching contributions
- Safe-harbor profit-sharing contributions:
 - May be added as late as 30 days prior to the plan year end
 - May be added as late as the last day of the following year, if the contribution is raised from 3% of pay to 4% for that initial year
- Safe-harbor qualified automatic contribution arrangements
 - The 10% cap on the default rate has been increased to 15% starting in a plan's second year

15

Late Plan Adoption

- New plan adoption deadline
 - Old rule: by the last day of the first plan year
 - New rule: by the due date of the federal tax return for that plan year (including extensions)
 - Form 5500 may be due before the tax return

16

Increased Tax Credits

- Small businesses can now receive 3 years of tax credits for up to half the cost of a new retirement plan equal to the greater of:
 - \$500 per year; or
 - \$250 per non-highly compensated participant up to \$5,000
- Additional 3 years of \$500 credits if the new plan is a 401(k) with automatic enrollment

17

Part-time Employees

- 401(k) plans are required to cover part-time employees beginning in 2024
 - For elective deferrals only (not employer contributions)
- Part-time employees defined:
 - Those who complete at least 500 hours of service for 3 consecutive years (excluding service prior to 2021)
- Coverage or discrimination testing
 - May exclude part-time employees
- Unresolved issue:
 - Would a plan require an annual audit if the part-time employees push the participant count over 120?

18

Annual Notices & Distributions

- Defined contribution plan annual statements
 - Required to show how large of a life annuity could be purchased with current account balance
 - Required even if the plan does not provide for annuity payout
- Penalty-free distribution for birth or adoption of child
 - Capped at \$5,000
 - May later be returned to the plan

19

Annual Notices & Distributions

- 403(b) plans may now distribute annuity contracts and individual custodial accounts upon:
 - Plan termination; or
 - Elimination of those types of investment options
- Defined benefit and cash balance plan in-service distributions
 - Now allowed after age 59½ (down from age 62)

20

Plan Tax Returns & MEPs

- Combined Form 5500 allowed for single employer defined contribution plans with the same fiduciaries and investment options beginning in 2021
- Penalties have increased for late filed 5500s and other IRS forms
 - “Mercy” programs are still in place to reduce penalties
- Multiple employer plans (“MEPs”)
 - It is now easier for unrelated employers to come together to create a single MEP

21

Loss of Stretch IRA

- Beneficiaries must now take distributions within 10 years after a participant’s death
- An exception applies for:
 - Spouses, minor children, disabled or chronically ill persons, and individuals not more than 10 years younger than the participant
- The new rule is not applicable to defined benefit and cash balance plans

22

Questions?

Thank you

23



24