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SECURE Act Part II: Affordable Care Act, MEPs, and Tax Incentives

When the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) became law on December 20, 2019, the changes affected several areas of retirement plan rules. Our January 10, 2020 SECURE Act legal update, [which you can read here](#), reviewed the changes to qualified retirement plan rules, including changes to 401(k) plans, IRAs, and retirement plans in general. Today we focus on the changes implemented by the SECURE Act as they relate to the Affordable Care Act (ACA), multiple employer plans (MEPs), and new tax incentives for small businesses meant to encourage the provision of retirement plans to their employees.

Changes Affecting the Affordable Care Act:

Repeal of the Cadillac Tax: The Cadillac Tax was an ACA provision that sought to impose a 40% excise tax on high-cost employer-sponsored health plans that exceed certain thresholds. The tax was an original part of the ACA signed in 2010, but its effective date was delayed twice, with the effective date set for 2022. The anticipated thresholds for high-cost plans were \$11,200 for individual coverage and \$30,150 for family coverage, adjusted annually for inflation. The employer, insurer, or the plan administrator calculated and paid the tax, depending on the type of plan. Still, much of the burden would have affected workers because employers would switch to less expensive health plans to avoid the tax. The SECURE Act repealed the Cadillac tax, thereby relieving pressure on employers who would have had additional costs and administrative burdens beginning in 2022 and on employees whose health plans were at risk.

Repeal of the Medical Device Excise Tax: The Medical Device Excise Tax was a provision within the ACA that imposed a 2.3% excise tax on the price of certain medical devices sold in the U.S., such as X-ray machines and hospital beds. The tax went into effect in 2013, serving as a general revenue raiser for the federal government. After subsequent research showed that the tax would

lead to negative effects on the industry and consumers, the tax was suspended for 2016 through 2019. The SECURE Act repealed this Medical Device Excise Tax, relieving the medical device industry from another tax that arguably suppresses innovation in the industry.

Changes Encouraging Businesses to Provide Benefit Plans:

Changes Encouraging MEPs: Multiple Employer Plans (MEPs) provide unrelated employers the ability to join together to create one overarching retirement plan that serves their employees collectively. MEPs provide employers who may not be able to afford their own retirement plan with an alternative by taking advantage of economies of scale. The SECURE Act made the following notable changes to the operation of MEPs:

- To be treated as a MEP, the plan must comply with the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code). A violation of ERISA or the Code by one participating employer could have potentially disqualified the entire MEP. This rule was coined the “one bad apple” rule. To ease the administrative requirements associated with MEPs and encourage more employers to join a MEP, the SECURE Act repealed the “one bad apple” rule.
- Prior to the SECURE Act, the only permitted MEPs were “closed” MEPs (i.e., MEPs where the participating employers shared some organizational relationship, such as being in the same industry, as opposed to “open” MEPs where participating employers do not necessarily share an organizational relationship) and, pursuant to final regulations issued in 2019, MEPs sponsored by employer associations and professional employer organizations. The SECURE Act clarifies that another type of “open” MEP is now permitted. This MEP is called a “pooled employer plan” (PEP) which can be administered by a “pooled plan provider,” such as banks and insurance companies. The SECURE Act provides additional detail regarding PEPs and their administration.

Small Business Tax Incentives: The SECURE Act added the following tax incentives to already existing incentives meant to encourage small businesses to create benefit plans for their employees:

- In order to defray the startup costs associated with the creation of a retirement plan, the SECURE Act grants a three-year credit equal to the greater of (1) \$500, or (2) the lesser of (a) \$250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan, or (b) \$5,000.
- The SECURE Act creates a new three-year tax credit of up to \$500 per year to defray startup costs for new 401(k) plans and SIMPLE IRAs that include automatic enrollment. The goal is to encourage employer-sponsored retirement plans to implement automatic enrollment.

We will be providing further updates on the SECURE Act as additional guidance is released.

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