

Employee Benefits 2020 Year-End Action Items: What to Remember from a Year to Forget

Presented by:

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Introduction

- SECURE Act of 2019
 - Go-forward rules for qualified plans (Rob Johnson)
- CARES Act of 2020
 - Special COVID relief; 2020 only (Rob Johnson)
- COVID Guidance
 - It's complicated (Rob Johnson)
- 401(k) Restatement Cycle
 - New six-year cycle (Ryan Dewey)
- Post-Election Tax & Benefits Policy
 - Benefits and tax proposals (Christopher McLean)

SECURE Act of 2019

Rob Johnson

SECURE Act

- Safe harbor plans
 - 3% nonelective (i.e., non-matching) safe harbor can be adopted 30 days before year-end
 - No notice requirement before plan year
 - 4% nonelective safe harbor can be adopted *after* the end of the plan year
 - Can adopt on year-by-year basis
 - Does not change safe harbor match rules

SECURE Act (cont.)

- New plan can be adopted after the end of year
 - Previously had to adopt plan by last day of year, even though contributions could be made through tax filing deadline
 - Now have until tax filing deadline (with extensions) to adopt a new plan
 - Can make employer contributions (but not elective deferrals) for prior year

SECURE Act (cont.)

- Qualified birth or adoption distributions
 - Starting January 1, 2020, can take a distribution following birth or adoption of child
 - Taxable but no 10% early withdrawal penalty
 - Up to \$5,000 per employee per child
 - Spouses working for same company and having twins can take \$20,000 total from one plan
 - Within one year of birth or adoption
 - Can be re-contributed (but timeline unclear)
 - Plans generally must accept re-contributions

SECURE Act (cont.)

- Long-term, part-time employees
 - Three years of 500+ hours may defer
 - No employer contributions required
 - Exceptions to compliance testing rules included
 - If employer contributions, vesting at 500 hours
 - Start counting 500-hour years in 2021 for eligibility; count all years (including prior to 2021) for vesting
 - Not specified, but exclusion by category (e.g., all employees in the California office) appears to override the 500-hour rule

SECURE Act (cont.)

- RMD changes
 - RMD starting age is now 72 (was 70 ½) for people reaching age 70 ½ on or after January 1, 2020
 - For people reaching age 70 ½ on or before December 31, 2019, old rules continue to apply
 - Elimination of “stretch” distributions
 - For everyone except certain beneficiaries, entire plan account must be distributed within 10 years of participant’s death

CARES Act of 2020

Rob Johnson

CARES Act

- Coronavirus-related distributions
 - Up to \$100,000
 - Any time during 2020 (January 1 – December 30)
 - Qualified individuals
 - Self-certification
 - Taxed over three years
 - No 10% early withdrawal penalty
 - Can be re-contributed directly to plan or to IRA within 3 years
 - Voluntary for plan to implement

CARES Act (cont.)

- Participant loan relief
 - Maximum loan of \$100,000 or 100% of account balance (normally \$50,000 or 50%)
 - New loans taken with 180 days of CARES Act
 - Ended September 22
 - For new or existing loans, repayments may be suspended until January 1, 2021
 - Loan suspensions are re-amortized and accrue interest during suspension period
 - Voluntary for plan to implement

CARES Act (cont.)

- 2020 RMD suspensions
 - CARES Act suspended 2020 RMD requirements
 - Applies to regular 2020 RMDs and first RMD for participants required to start in 2019 that would have been due by April 1, 2020
 - Plans can still distribute “RMD” amount or suspend it; participant can elect otherwise

COVID Guidance

Rob Johnson

COVID Guidance

- Too much to mention all in detail
 - Many extended deadlines for filings and contributions, relief to make certain mid-year changes, etc.
- COBRA extensions still in effect
 - Election and payment deadlines suspended
- Determination of partial plan termination
 - Look at impact of furlough, layoff, rehire

401(k) Restatement Cycle

Ryan Dewey

401(k) Restatement Cycle

- All pre-approved plans need to be restated every six years during a two-year window
 - Does not include individually designed plans (e.g., ESOP, custom-drafted 401(k))
- Restatement window is 8/1/20 – 7/31/22
- Generally best to wait toward end of two-year window (late 2021 or early 2022)

401(k) Restatement Cycle (cont.)

- Still waiting on IRS guidance and plan amendments, so best to wait to make SECURE/CARES Act amendments until restatement is done in 2021 or 2022
- Plan sponsors need to make other discretionary or design changes in the meantime if they are not specific to SECURE/CARES Act required amendments

What Happens Next? Post-Biden Election Possibilities: Tax & Benefits

Christopher McLean

Proposed “SECURE 2.0” – Securing a Strong Retirement Act of 2020

- Bi-partisan bill introduced at the end of October, referred to Committee but will not be considered until the next Congress
- Lots of proposed changes that have received support from retirement plan industry

Proposed “SECURE 2.0” – Securing a Strong Retirement Act of 2020 (cont.)

- Highlights:
 - Promote savings earlier for retirement by enrolling employees automatically in their company’s 401(k) plan when a new plan is created
 - Create a new financial incentive for small businesses to offer retirement plans
 - Offer individuals 60 and older more flexibility to set aside savings as they approach retirement
 - Allow individuals to save for retirement longer by increasing the required minimum distribution age to 75

Proposed “SECURE 2.0” – Securing a Strong Retirement Act of 2020 (cont.)

- Highlights:
 - Allow individuals to pay down a student loan instead of contributing to a 401(k) plan and still receive an employer match in their retirement plan
 - Allow individuals more flexibility to make gifts to charity through their IRAs
 - Make it easier for employees to find lost retirement accounts by creating a national, online, database of lost accounts

ESOP Developments

- “SECURE 2.0” included the (occasionally re-introduced) concept to amend the Internal Revenue Code to extend 1042 capital gains rollover/deferral treatment to selling shareholders of S-Corp stock (currently, 1042 elections are available only to sellers of C-Corp stock)
- Biden Administration should be friendly toward Employee Ownership due to campaign pledges to address income inequality

ESOP Developments (cont.)

- Labor Department aggressive enforcement activity on ESOPs unchanged
- Some believe Labor Department enforcement focus may shift away from ESOPs
- BUT, this will largely be impacted by who President-elect Biden nominates as Labor Secretary and deputies

Looking Forward: President-Elect Biden's Nominations

- Nomination still to come: Labor Secretary—who's in the running?
 - Abby Finkenauer – former U.S. Congresswoman from Iowa, close to Biden and appears likely to get a nomination to a post if not Labor
 - Marty Walsh – Boston Mayor
 - Andy Levin – U.S. Congressman from Michigan
 - Julie Su – California Labor Secretary
 - Two names on the periphery, Senator Bernie Sanders and Tom Perez (former Labor Secretary under President Obama and, more recently, DNC Chair)

Looking Forward: President-Elect Biden's Nominations (cont.)

- Nominations so far:
 - Treasury Secretary: Janet Yellen, nominated December 1, 2020
 - Deputy Treasury Secretary: Adewale “Wally” Adeyamo, nominated December 1, 2020
 - Council of Economic Advisors: Jared Bernstein, nominated December 1, 2020 - Very familiar with ESOPs and their ability to help close the wealth inequality as he authored a 2016 study on the subject
- Regardless of the appointment (for either Treasury or Labor), if the Senate ends up in Republican control, appointments may see some hurdles

Looking Forward: Election

- GA Senate Run-off January 5, 2021, what will happen?
 - It is close and some in GA even believe the Democrats' efforts may pay-off in a run-off unlike previous run-offs

Looking Forward: What If Democrats Pull Off the Double-Play in GA?

- Afford a Biden appointments a smoother path to confirmations in the Senate
- Make Biden campaign proposals much more achievable, including Tax and Healthcare Plans

Looking Forward: Democratic Control: Biden's Tax Plan

- Individual Tax: Raise the top marginal tax rate 2.6% for income over \$400,000 / tax capital gains as ordinary income for individuals earning more than \$1 million
- Corporate Tax: Raise the corporate tax rate from 21% to 28%

Looking Forward: Democratic Control: Biden's Tax Plan (cont.)

- Employment, retirement and healthcare tax:
 - Tighten the rules for classifying independent contractors by increasing penalties for misclassification
 - Raise payroll taxes for workers with more than \$400,000 in earnings by reinstating FICA taxes on income over \$400,000 (2020 FICA max is \$137,000)
 - Increase tax preferences for middle-income taxpayer contributions to 401(k) plans and individual retirement accounts (IRAs)
 - Replace the deduction for worker contributions to traditional IRAs and defined-contribution pensions with a refundable tax credit

Looking Forward: Democratic Control: Biden's Healthcare Plan

- Provide a public health insurance option like Medicare (the “public option”)
- Increase the value of tax credits to lower premiums and extend coverage to more working Americans
- Expand coverage to low-income individuals
- Simplify healthcare system
- Provide middle-class families a premium tax credit to help pay for coverage and afford better coverage

Looking Forward: What If Republicans Win One Or Both GA Senate Run-Off Seats?

- As mentioned, bumpier road to appointment confirmations
- Less likely to see drastic legislation passed due to divided Congress
 - However, many still believe that a narrow bill on Healthcare might be a possibility

Looking Forward: What If Republicans Win One Or Both GA Senate Run-Off Seats? (cont.)

- More likely to see action via Executive Orders and, if appointments are successful, more action at the Regulatory and Sub-Regulatory levels

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