SECURE Act Section 112
Long-Term Part-Time Employees

At the end of 2019 the Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law. The intent of the Act is to amend the Internal Revenue Code of 1986 to encourage retirement savings.

One change involved expanding the ability of long-term part-time employees to make 401(k) deferral contributions. While this change becomes effective in 2024, employers that apply an eligibility service requirement to determine whether employees can contribute to a 401(k) plan **must** begin tracking hours of service for part-time employees beginning January 1, 2021.

SECURE Act Expansion of Eligibility Rules

In addition to the limitations on a plan's minimum age and service requirements, the SECURE Act amended the Internal Revenue Code to prohibit 401(k) plans from excluding long-term, part-time employees who:

- Complete at least 500 hours of service for 3 consecutive 12-month periods; and
- Are at least 21 years of age at the end of the 36-month period.

If a part-time employee meets these two conditions, then they **must** be eligible to make elective deferral contributions to his or her employer's 401(k) plan. However, a plan may still exclude these participants from receiving employer contributions (i.e., matching and/or nonelective contributions) until they have met the typical 1,000 hours of service eligibility requirement.

The SECURE Act will certainly enable many long-term, part-time employees to become eligible to participate in their employer's 401(k) plan. To be prepared for this change, a review of the plan documents may be needed to understand whether this provision will apply and how it may affect plan administration. Employers should also consider whether any plan design changes are required to comply with the new rule, and most importantly, should consider implementing a system to track employees' hours of service, starting January 1, 2021.

*Further guidance is expected from the IRS on this topic and will be provided to Plan Sponsors upon released.

SECURE Act Allows for ADP Failure Relief by Retroactive Adoption of Nonelective Contribution Safe Harbor Retirement Plan Status

Safe Harbor Plan Adoption Timing

- Prior to adoption of the SECURE Act, the deadline for implementing a new safe harbor 401(k) plan was October 1, 2020. For existing plans, the safe harbor provision had to be amended by January 1st of the year in which the provision was enacted.
- Under the SECURE Act, employers now have more time to determine if they want to transition to or adopt a safe harbor. Employers now have up to 30 days before the end of a plan year to adopt a safe harbor plan or amend an existing plan to include safe harbor provisions by providing a 3% non-elective contribution.
- In addition, a traditional 401(k) plan may be retroactively converted to a safe harbor plan after the 30-day requirement by making a 4% non-elective contribution to eligible employees by the end of the following plan year. This provides employers with a way to correct a 401(k) plan that fails the actual deferral percentage (ADP) test without having to distribute refunds.
- Note that these options are not available for plans that use a safe harbor matching contribution to satisfy ADP or certain automatic contributions arrangements governed by the IRS. These new rules are in effect for plan years after December 31, 2019.

*Further guidance is expected from the IRS on this topic and will be provided to Plan Sponsors upon released.