

# Compensation and Benefits Insights



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## The SECURE Act: Key Takeaways for Retirement Plan Sponsors

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On December 20, 2019, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”) was signed into law. The SECURE Act implements new rules for creating and maintaining retirement plans. Plan sponsors should consider and plan for the impact of these new rules to ensure timely compliance.

### New 401(k) Eligibility Requirement for Long-Term Part-Time Employees

Before the SECURE Act, employers could generally exclude part-time employees (i.e., employees who work less than 1,000 hours per year) from their 401(k) plans. However, starting in 2021, the new rules will require most employers maintaining a 401(k) plan to maintain dual eligibility requirements for part-time employees. Part-time employees must be allowed to enter the 401(k) upon completing either a one-year-of-service requirement (with the 1,000-hour rule), or at least 500 hours of service for at least three consecutive years (beginning in 2021) and attaining age 21 at the end of three year period (“Long-Term Part-Time Employees”). Long-Term Part-Time Employees are only required to be eligible to make deferral contributions under a 401(k). However, employers may also allow Long-Term Part-Time Employees to participate in employer matching and non-elective contributions.

### Open Multiple Employer Plans (MEPs)

A MEP is a single plan maintained by two or more unrelated employers. Starting in 2021, the new rules are designed to reduce the barriers to creating and maintaining MEPs, which should help increase opportunities for small employers to band together to obtain more favorable investment

### Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan “stock drop” cases and other breach-of-fiduciary-duty class actions.

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results, while allowing for more efficient and less expensive management services.

## Increase in Age for Beginning Required Minimum Distributions (RMDs)

Before the SECURE Act, participants were generally required to begin taking distributions from their retirement plan by April 1st of the calendar year following the year in which the participant turns age 70-½. The SECURE Act increases the required minimum distribution age from 70-½ to 72. This change applies to participants who turn 70-½ after December 31, 2019.

## Increase the Auto Enrollment Safe Harbor Cap

Starting in 2020, the new rules increase the cap on the default deferral rate under a safe harbor 401(k) automatic contribution arrangement from 10% to 15%, for years after the participant's first election year. For the participant's first election year, the cap on the default rate remains 10%. This is an optional change.

## Other SECURE Act Highlights

Some other highlights of the SECURE Act include nondiscrimination testing relief for certain closed defined benefit plans and allowing for penalty-free retirement plan withdrawals for a birth or adoption. The SECURE Act also provides for increased penalties for failing to file retirement plan returns on time (starting in 2020, the penalty for failing to file a Form 5500 is \$250 per day, not to exceed \$150,000, increased from \$25 per day capped at \$15,000 per year).

King & Spalding would be happy to assist you with any questions you have about the SECURE Act.

## February and March 2020 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

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Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for February through March 2020. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is usually delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

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Deadline	Item	Action	Affected Plans
February 14 (within 45 days after the close of the fourth quarter of previous plan year)	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the fourth quarter of the previous plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	Defined Contribution Plans that allow participants to direct investments
	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send fourth quarter benefit statement for previous plan year to participants in participant-directed defined contribution plans.	
February 28 (if filing paper forms)	IRS Form 1099-R	Deadline for employer to file IRS Form 1099-R. If the form is filed electronically, the deadline can be extended until March 31.	Qualified Retirement Plans
	IRS Form 1094-B Transmittal Forms	Deadline for providers of minimum essential coverage to transmit forms to IRS reporting the months during the year that individuals enrolled in the group health plan satisfied the individual mandate by enrolling in minimum essential coverage. If the form is filed electronically, the deadline can be extended until March 31.	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1094-C Transmittal Forms	Deadline for plan sponsors that employed an average of at least 50 full-time employees in 2019 (also known as “Applicable Large Employers” or “ALEs”) to transmit forms to IRS reporting whether the ALEs offered an opportunity to enroll in (and whether employees did enroll in) minimum essential coverage under the ALE’s sponsored plan. If the form is filed electronically, the deadline can be extended until March 31.	Applicable Large Employers
March 1	Medicare Part D Creditable Coverage Disclosure	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to disclose to the Centers for Medicaid and Medicare Services (CMS) whether the coverage is “creditable prescription drug coverage”	Health and Welfare Plans that provide prescription drug coverage to

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Deadline	Item	Action	Affected Plans
(60 days after the beginning of the plan year)		by completing the Online Disclosure to CMS Form at <a href="https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html">https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html</a>	Medicare Part D eligible individuals
March 2	IRS Form 1095-B Individual Statements	<p>Deadline for providers of minimum essential coverage to distribute forms used to report to responsible individuals the months during the year that the individuals satisfied the individual mandate by enrolling in minimum essential coverage. This deadline was extended from its original deadline of January 31.</p> <p>Note that self-insured ALEs can report this information on Form 1095-C. Fully insured plan sponsors that are not ALEs are not required to distribute Form 1095-B, which are distributed by the group health plan insurers.</p>	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1095-C Individual Statements	Deadline for ALEs to provide a written statement to employees indicating whether the ALEs offered an opportunity to enroll in (and whether the employee did enroll in) minimum essential coverage under the ALE's sponsored plan. This deadline was extended from its original deadline of January 31.	Applicable Large Employers
March 15	Plan Contribution Deadline	Deadline for corporate employer contributions to be made to plan trusts in order for such amounts to be deductible on corporate tax returns (assuming the employer is operating on a calendar-year fiscal year). Note that this deadline may be extended if an extension is obtained for the corporate tax return.	Qualified Retirement Plans
March 15 (2 ½ months after the plan year)	Excess Contributions	Deadline for plan administrator to distribute any excess contributions and earnings from the prior year to avoid 10% excise tax on employer (other than eligible automatic contribution arrangements (EACAs)).	401(k) Plans Other Than EACAs

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Deadline	Item	Action	Affected Plans
March 31  (last day of 3rd month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is 10 points less than prior year AFTAP.	Defined Benefit Plans
March 31 (if filing electronically)	IRS Form 1094-B Transmittal Forms	Deadline for providers of minimum essential coverage to transmit forms to IRS reporting the months during the year that individuals enrolled in the group health plan satisfied the individual mandate by enrolling in minimum essential coverage.	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1094-C Transmittal Forms	Deadline for ALEs to transmit forms to IRS reporting whether the ALEs offered an opportunity to enroll in (and whether employees did enroll in) minimum essential coverage under the ALE's sponsored plan.	Applicable Large Employers