

EMPLOYEE BENEFITS LAW

INFORMATION MEMO

NOVEMBER 24, 2021

Retirement Plan Amendment Deadlines

As we approach the end of 2021, it is a good time to review upcoming year-end plan amendment deadlines applicable to retirement plans. Employers should review their plans with their providers and advisers to determine if any plan amendments need to be adopted by the end of 2021.

Hardship Distribution Amendments

The Bipartisan Budget Act of 2018 enacted changes to the hardship distribution rules applicable to qualified retirement plans (e.g., 401(k) plans and 403(b) plans). These changes, which became operationally effective on January 1, 2020: (a) eliminated the requirement that elective deferrals be suspended following receipt of a hardship distribution; (b) allowed plans to eliminate the requirement that a participant obtain all available plan loans before receiving a hardship distribution; (c) made hardship distributions available for a federally declared disaster; (d) expanded the types of contributions available for a hardship distribution; and (e) modified the process for determining that a hardship distribution is necessary to meet the participant's financial need. Plans providing for hardship distributions must be amended to reflect these changes by no later than December 31, 2021.

Discretionary Amendments

As a reminder, if an employer wants to make changes to the terms of a retirement plan (other than changes required by law for which an amendment deadline is specified), an amendment to reflect those changes must be adopted by no later than the last day of the plan year in which the changes are to be effective. For example, as a general rule, in order for a change to be effective in 2021, an amendment making that change must be adopted by no later than December 31, 2021 (for a plan that operates on a January 1 to December 31 plan year). Keep in mind that some amendments cannot be adopted retroactively, even if adopted within the same plan year, and specific amendment timing rules apply to some type of plans and amendments. For example, IRS rules limit the ability of a safe harbor 401(k) plan to make certain changes prior to the beginning of the next plan year.

In connection with the workplace upheaval and uncertainty created by the COVID-19 pandemic, some employers took action to suspend or reduce contributions to defined contribution retirement plans. If an employer reinstated employer contributions during the 2021 plan year or otherwise modified the groups of participants eligible for contributions and/or the formula for determining those contributions, the plan may need to be amended by December 31, 2021, to reflect those changes. While certain employee benefit plan-related deadlines were extended in connection with the pandemic, the rule that requires discretionary amendments to be adopted by the last day of the plan year in which the amendments are to be effective has not been modified.

While amendments to reflect changes applicable to retirement plans under the Setting Every Community Up for Retirement Enhancement (SECURE) Act and the Coronavirus Aid, Relief and Economic Security (CARES) Act eventually will be required, those amendments are not required to be adopted in 2021.

If you have any questions about the information presented in this memo, please contact [Aaron Pierce](#), any attorney in our [Employee Benefits and Executive Compensation practice](#) or the attorney at the firm with whom you are regularly in contact.



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