

**SHUMAKER**

**18**

**months of benefit changes in  
60 minutes**

**What happened, and why it matters.**

# **SECURE ACT**

**DECEMBER 2019 – SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT**

---

# **FFCRA**

**MARCH 2020 – FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

# **CARES ACT**

**MARCH 2020 – CORONAVIRUS AID, RELIEF AND ECONOMICS SECURITY ACT**

# **CAA**

**DECEMBER 2020 – CONSOLIDATED APPROPRIATIONS ACT**

# **ARPA**

**MARCH 2021 – AMERICAN RESCUE PLAN ACT**

Key changes in labor and tax laws may require changes or decisions in your retirement and medical plan documents and administration.

Some responses will come from plan sponsors and other outside administrators, but the plan sponsor must make or approve key document and operations decisions initiated over the last 18 months.



# SECURE Act Changes

---

- ▶ Age 72 is the new RMD starting date
- ▶ Open Multiple Employer Plans
- ▶ Long-term part-time employees can make salary deferrals
- ▶ Disclosure of Lifetime Income Estimate (12 months after guidance is issued)
- ▶ In-Service withdrawals available for birth/adoption expenses
- ▶ Increased penalties for Plan Sponsors failing to report/file
- ▶ Ease of restrictions and administrative burdens to encourage

72

## RMD age 70½ to 72

Increased the Required Minimum Distribution age from 70½ to **72** for qualified plan distributions.

CARES ACT

### RMDs waived for Plan Year 2020

- ▶ includes 2019 RMDs that were due to be paid by April 1, 2020
- ▶ 2020 RMDs that were distributed were eligible for rollover
- ▶ See Notice [2020-51](#) for more guidance

Plans will need to be administratively compliant by **June, 2021**.

Plans will need to be amended by the last day of the plan year beginning on or after **January 1, 2022**.



# Part-Time 500 Hour Eligibility

Long-term part-time employees who work at least **500** hours per year for three consecutive years must be offered the right to make salary deferrals.

P/T  
500

# Part-Time 500 Hour Eligibility

- ▶ Does not replace the 1,000 hour rule, therefore employers must track **dual eligibility**.
- ▶ Eligible 500 hour employees may be excluded from non-discrimination and coverage rules, and from the application of top-heavy rules, as a result - the expanded eligibility should **not impact an employer's tax qualification** after adding the newly eligible part-time employees.
- ▶ Only applies to **401(k) contributions** – existing rules still apply for employer matching and nonelective contributions.
- ▶ Does not apply to 403(b) plans or collectively bargained plans.

Effective Dates: **NOW** - Track part-time hours

**2024** - Qualifying LTPTs must be offered opportunity to make salary deferrals



# Lifetime Income Disclosure

Requires employers to provide 401(k) participants with **Annual Benefit Statements** that include a Lifetime Income Disclosure.

- ▶ Two lifetime income illustrations – SLA and QJSA.
- ▶ Model disclosure will encourage participants to consider income streams instead of lump sums.

## GENERAL REGULATORY ASSUMPTIONS

- ▶ Payments begin on last day of statement period
- ▶ Age 67 (or actual age if older)
- ▶ Single Life Annuity
- ▶ QJSA (spouse is equal age, 100%)
- ▶ 10-year CMT
- ▶ Gender Neutral Mortality Table





# Penalty Free Withdrawals for Birth/Adoption

Within one year of the birth or adoption of a child, a participant can take an In-Service withdrawal up to a maximum of **\$5,000** with **no early withdrawal 10% penalty applied.**

- ▶ Each individual can withdraw \$5,000 from their own account
- ▶ Income tax is still owed unless the funds are repaid
- ▶ Adoptee must be younger than 18 years old, or physically or mentally incapable of self-support (does not include adoption of a spouse's child)
- ▶ After the adoption or birth is complete

## Repayment

- ▶ Can be repaid anytime
- ▶ Rollover contribution back into the Plan (or eligible Plan/IRA)

Effective Date: **NOW**

**VOLUNTARY:** If adopted, Plans must be amended no sooner than last day of the 2022 plan year.

# Penalties Increased for Failure to File

## Promote Timely Filings

Plan Returns / Statements	Current Penalty	SECURE Act Penalty
Plan Tax Return	\$330	<b>\$435</b> <b>100% of tax due</b>
Form 5500	\$25/day \$15,000	\$250/day \$150,000
Registration Statement (Form 8955-SSA)	\$1/participant \$5,000	\$10/participant \$50,000
Change Of Status Notice	\$1/participant \$1,000	\$10/participant \$10,000
Withholding Notice	\$10/failure \$5,000	\$100/failure \$50,000

# Automatic Salary Deferral Limit Increased

Cap on automatic salary deferral increased from 10% to **15%**  
for Qualified Automatic Contribution Arrangement plans.

The 10% cap remains in place for the first year of participation.

The higher limit makes it easier for participants to have continuous automatic annual increases, resulting in higher retirement savings rates

# Consolidated 5500s

---

Allows for filing of combined Form 5500 Annual Reports for several retirement plans maintained by the same employer.

Eligible plans include individual account or defined contribution plans that have the same:

- ▶ Trustee
- ▶ Named Fiduciary
- ▶ Plan Administrator
- ▶ Investment options
- ▶ Plan Year

# SECURE Act

---

- ▶ Ease restrictions
- ▶ Simplify regulations
- ▶ Reduce cost
- ▶ Reduce risk
- ▶ Reduce administrative requirements



The result makes  
plans more  
accessible, less  
expensive and  
simpler to operate.

# Response to COVID-19

---

- ▶ Coronavirus Related Distributions
- ▶ RMDs suspended for Plan Year 2020
- ▶ Required and Voluntary Health Plan Changes
- ▶ Required and Voluntary FSA changes
- ▶ COBRA subsidy
- ▶ Mental Health Parity and Addiction Equity Act
- ▶ No Surprises Act
- ▶ Wellness Incentives



# CRD - Coronavirus Related Distribution

## Penalty-free distributions:

- ▶ 1/1/2020 – 12/30/2020
- ▶ Maximum of \$100,000 aggregate
- ▶ Elect to pay all or part within 3 years from distribution date
- ▶ Regular income taxes apply, but can be paid evenly over 3 years beginning in the year of distribution
- ▶ Can elect not to repay distribution – included in taxable income equally over the 3 years starting with 2020.

## ISSUES FOR EMPLOYERS:

Participants **self-certify** they are a Qualified Individual (QI)

QDRO/Divorce – spousal approval

Favorable tax benefits apply if eligible under normal plan terms

Ensure your record-keeper has reamortized

If adopted, amend the Plan

Effective Date: **NOW**

**VOLUNTARY:** If adopted, Plans must be amended by **DECEMBER 31, 2022**



# CRD - Loans

---

## Increased Loan Amount: (your Plan must permit loans):

- ▶ \$100,000 of eligible loan account balance;
- ▶ 100% of non-forfeitable accrued benefit

Reduced by the excess (if any) of highest outstanding loan balance during the one-year period ending on the day before the new loan is made.

## Loan Repayments: May be suspended for one year

- ▶ Applies to new and existing loans
- ▶ Interest continues to accrue, re-payments are re-amortized (interest & extension)
- ▶ 5 year loan repayment adjusted to accommodate the additional year.

Effective Date: **NOW**

**VOLUNTARY:** If adopted, Plans must be amended by **DECEMBER 31, 2022**



72

## RMDs Waived - 2020

---

### RMDs waived for Plan Year 2020 ([NOTICE 2020-51](#))

- ▶ includes 2019 RMDs that were due by April 1, 2020
- ▶ 2020 RMDs that were distributed are eligible for rollover

Plans will need to be administratively compliant by **June, 2021**.

Plans will need to be amended by the last day of the plan year beginning on or after **January 1, 2022**.



# Health Plan Changes

## REQUIRED DURATION OF PUBLIC HEALTH EMERGENCY:

- ▶ No cost sharing for COVID-19 testing, medical services and vaccinations
  - ▶ HDHPs (first dollar coverage for COVID-19 testing & diagnostics, telehealth)
  - ▶ Extended deadlines, mid-year election changes
  - ▶ End of Outbreak Period ([NOTICE 2021-01](#))
- EARLIER OF:**
- ▶ One year from the date eligible for relief
  - ▶ 60 days after the announced end of the National Emergency (i.e. Outbreak Period)

## How did you handle Health care continuation?

- ▶ Furlough – Temporary Layoff – Permanent Layoff



# Voluntary FSA Relief

---

- ▶ Unlimited Carryover
- ▶ Extended Grace Period
  - ▶ Applies to Health and Dependent Care FSAs – 2020 and 2021
- ▶ Mid-Year FSA Election Change Relief
- ▶ Health FSA Spend Down
- ▶ Increased 2021 Dependent Care FSA Limits (**\$10,500 & \$5,250**)
  
- ▶ Over-the-counter medicine without a prescription and menstrual care products reimbursed from the FSA (amend retroactively to 1/1/2020)



# 100% COBRA Subsidy

APRIL 1 – SEPT. 30, 2021

**March 11<sup>th</sup>** (ARP)   **April 1<sup>st</sup>** (effective)   **May 18<sup>th</sup>** (guidance issued)

[Notice 2021-31](#): 4 pages of guidance, 28 pages of Q&A

- ▶ Determining AElS (Assistance Eligible Individuals)
  - ▶ Defining involuntary termination – “facts and circumstance”
  - ▶ Attestations / Self-Certification
- ▶ Notice Requirements: Availability, Extended Election Period, Expiration
- ▶ Severance packages – when does the COBRA continuation period begin?
- ▶ Does **not** include any amount the employer would have subsidized

**PAYMENT OF THE SUBSIDY:** Credit against quarterly payroll taxes. If credit exceeds the amount of payroll taxes due, the credit is refundable.

Effective Date: **April 1, 2021**

Plans must be amended by: **December 31, 2021**



# Mental Health Parity - NQTLs

---

Non-Quantitative Treatment Limits  
(NQTL) to be applied and compared  
to the **processes, strategies,**  
**evidentiary standards** or other  
factors used in applying limits to  
medical/surgical benefits in the same  
classification.



- ▶ Experimental and/or investigational exclusions
- ▶ Prior/ongoing authorization requirements
- ▶ Formulary design
- ▶ Step therapy
- ▶ Network tier design
- ▶ Determining R&C rates

2/10

# Mental Health Parity – Disclosure

---

**FEBRUARY 1, 2021**

- ▶ Have you performed and documented your analyses of your Plans to ensure the application of NQTLs are in compliance?
- ▶ Are these analyses available to share if a state or federal agency requests it?
- ▶ Can you furnish a compliant plan document and/or SPD if requested by a participant within 30 days of their request?

Effective Date: **February 1, 2021**

Plans must be amended by: **December 31, 2021**



# No Surprises Act

EMERGENCY SERVICES AT O-O-N HOSPITALS	O-O-N PROVIDERS AT IN-NETWORK FACILITIES	O-O-N AIR AMBULANCE
--	---	------------------------

- ▶ O-O-N cost sharing cannot be greater than In-Network cost sharing and must be counted toward any In-Network deductible and cost sharing limits.
- ▶ Cannot require preauthorization for O-O-N emergency services.
- ▶ Cannot apply coverage limitations for O-O-N emergency services that are more restrictive than In-Network emergency services.

**IDR**

Insurers / health plans – **30** days to pay the O-O-N rate or deny the claim  
Plan or provider can request IDR 4 days after 30-day negotiation period

Effective Date: **January 1, 2022**

HHS, DOL, and DOT will clarify provisions later this year.



# Wellness Incentives and Return to Work Challenges

## Can Employers offer incentives under a Wellness Program for Employees who receive a COVID vaccine?

- ▶ If you ask for proof of vaccination **and nothing more**, you likely will not have made a disability-related inquiry under the ADA and can provide more than a “de-minimis” incentive.
- ▶ If you administer the vaccine and 1) issue screening questions or 2) ask why an employee does not want to receive the vaccination, that is likely a disability-related question under the ADA and only “de-minimis” incentives can be provided.
- ▶ HIPAA - Return to Work Issues

Employees who cannot receive the vaccine must be provided a reasonable alternative to earn the incentive (i.e. watching a video on preventing the spread of COVID).

An example of a “de minimis” incentive is a water bottle or gift card of modest value.



# *What's on the horizon . . .*



**Independent Dispute Resolution**

**ID Cards Changes**

**Advance EOBs**

**Removal of gag clauses**

**Disclose Broker Compensation**

**Price Comparison Tools**

**Drug Cost Reporting**

**Continuity of Care**

**Mental Health Parity Testing**

**Provider Directory Guidance**

**All Payer Claims Database**

## PENSION CHECKLIST

- RMD 70-1/2 to 72
- Track hours for LTPT employees
- Lifetime Income Disclosure
- Penalty free birth/adoption distributions
- Increasing auto salary deferral to 15%
- Review 5500 filings to determine if consolidation is an option
- Add Coronavirus Distributions

## HEALTH & WELFARE CHECKLIST

- Ensure health plan documents include Continuation of Coverage
- Ensure health plan documents identify OTC drugs (no prescription required) and menstrual products are reimbursable under FSA and HSA
- FSA changes
- 100% COBRA Subsidy
- MHPAEA NQTLs Analysis
- Prepare for No Surprises Act changes with your Insurer or Claims Payer



**SHUMAKER**

*Thank you for attending.*

*Please contact us if you have additional questions.*

**Jim Culbreth**

**704.945.2186**

**[jculbreth@shumaker.com](mailto:jculbreth@shumaker.com)**

**Charlotte, NC**

**Emily Morrison**

**419.321.1360**

**[emorrison@shumaker.com](mailto:emorrison@shumaker.com)**

**Toledo, OH**

**Heidi Coughlin**

**419.321.1244**

**[hcoughlin@shumaker.com](mailto:hcoughlin@shumaker.com)**

**Toledo, OH**