

Details of the SECURE Act: Multiple Employer Plans (MEP) and Pooled Employer Plans (PEP)



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In late December of 2019 President Trump signed into law a budget bill to fund the government for the remainder of the fiscal year. Included as an addition to the bill was the SECURE Act (Setting Every Community Up for Retirement Enhancement Act of 2019). Some of the changes within the SECURE ACT impacted Multiple Employer Plans and established Pooled Employer Plans.

Section 101 of the Act enhanced capabilities of Multiple Employer Plans (MEP) and created Pooled Employer Plans (PEP).

Prior to the SECURE ACT, Multiple Employer Plans (MEP) allowed related businesses to participate in a single employer plan. MEP plans allowed smaller companies to take advantage of the economies of scale to obtain lower fees and better services. There were special rules for service crediting and compliance testing of MEP plans. Each employer had to be tested separately for discrimination, coverage and top heavy. They required that service with any participating employer in the MEP be recognized for purposes of eligibility, vesting and benefit accrual not just a single employer. For IRC §415 limits, all compensation and contributions from any participating employer was aggregated. MEP's were not easy to establish and had one big flaw. That flaw was called the "one bad apple" rule, where the compliance failures of one employer could disqualify the entire plan.

Effective for tax years beginning after December 31, 2019, the SECURE ACT changed some of the restriction on MEPs which makes them easier to establish. The "one bad apple" rule was eliminated but the plan has to have a process and procedure in place to eject the "bad apple" employer from the plan. The testing requirements remained the same.

Pooled Employer Plans (PEP) were created under the SECURE ACT to allow unrelated employers that meet certain requirements to adopt a single retirement plan. Only a Professional Employer Organization (PEO) could sponsor a PEP. The PEO must perform substantial employment functions on behalf of its clients such as provide payroll processing, health and welfare benefits and any other human capital management services. PEO must have substantial control over the functions and activities of the MEP acting as plan sponsor and maintain adequate records. PEO must ensure that each employer is acting directly as the employer of at least one employee

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participating in the plan. Participation in the plan is only available to employees, terminated employees and beneficiaries of the participating employers in the PEO.

Author comments: The expansion and creation of these arrangements can be a benefit for smaller employers if the limitations of the plan design and investments allow the accumulation of assets enough to lower fees and enhanced services. It is important to note that plan sponsor control over all aspects of the plan will be eliminate as the PEP sponsor will make design and investment decisions.



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