

Legislate[®]

Key Legislative Developments Affecting Your Human Resources US

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Senate Passes Tax Reform and Budget Deadline Looms

As they say, “It ain’t over ‘til it’s over.” Yes, we have a House bill, and yes, we have a Senate bill, and yes, lawmakers will go to conference to hammer out the differences. But we also have posturing about withholding votes if favorite terms are dropped. Between the tax bill and the December 8 deadline for a government shutdown, there’s plenty to watch besides annual holiday TV specials.

Tax Reform Progress and Potential Impact on Employee Benefits

Marking up House language from H.R. 1 nailed down weeks earlier (see our [November 15](#) issue of *Legislate*), the Senate passed a tax reform bill last week. Having diverted from the original House text, this week the chambers begin work on reconciling the two bills to produce the final tax reform bill they hope to have on President Trump’s desk by Christmas. Although the main issues the committee will need to sort out involve the individual tax rates, alternative minimum tax, the timing of the corporate tax rate change, and the estate tax, there are a few remaining employee benefit issues that could see changes in the final bill. Here’s a rundown on those issues in the two bills (text for both versions of H.R. 1 can be found [here](#)):

	House Bill	Senate Bill
Retirement Plans		
Retirement plan loan repayment	Would add extra time for terminated employees to complete rollover	Same
Six-month contribution waiting period after hardship distribution	Eliminated	No provision
Earnings and employer contributions available for hardship distribution	Added	Same
Loans required before hardship distribution	Eliminated	Same

	House Bill	Senate Bill
In-service withdrawals	Defined benefit and governmental 457(b) plans permitted to allow in-service withdrawals from age 59½	No provision
Closed defined benefit plans	Relaxed nondiscrimination, coverage and minimum participation rules	No provision
2016 disaster area tax relief	No provision	Would allow relief from 10% early distribution penalty, provide 3-year ratable income inclusion, and permit repayments for distributions before 2018 by individuals in presidentially declared disaster areas with disaster loss
Welfare and Fringe Benefits		
Dependent care assistance programs (DCAPS)	Eliminates employer-provided dependent care assistance as of January 1, 2023	No provision
Employer-provided child care credit (i.e., where employer owns, operates or contracts with a day care facility)	Repealed	No provision
Employer tax credit for paid family and medical leave	No provision	Provides employers with a business credit for 12.5% to 25% of the wages paid to qualifying employees on paid family and medical leave
Qualified transportation fringe benefits	Eliminates the employer deduction (e.g., business expense) for qualified transportation fringe benefits. (Exclusion from employee gross income for qualified transportation benefits – under Section 132 – remains)	Similar to House bill. Provides exception as necessary for ensuring the safety of an employee Suspends exclusion for qualified bicycle commuting expenses from January 1, 2018 to December 31, 2025
Employer-provided education assistance	Repeals tax exclusion	No provision
Employer-provided housing exclusion	Limits employer exclusion to \$50,000 (\$25,000 for married individuals filing separately) and one residence (i.e., where the housing is for the employer's convenience)	No provision
Employee achievement awards	Repeals tax exclusion	Tax exclusion eliminated if paid in cash, tickets, meals, lodging and certain other awards; not eliminated for certain other tangible property

	House Bill	Senate Bill
Qualified moving expense reimbursements	Repeals tax exclusion	Suspends exclusion for tax years beginning after 2017 and before 2026 (except for active duty military)
Adoption assistance programs	Repeals tax exclusion	No provision
Executive Compensation		
Excise tax on tax exempt organization executive compensation	Imposes 20% excise tax on organization for <ul style="list-style-type: none"> • compensation in excess of \$1 million • excess parachute payments paid to 5 highest-paid employees 	Same as House bill
Section 162(m) limit on deduction for employee compensation	Repeals exceptions for performance-based compensation and commissions from \$1 million yearly deduction limit	Similar to House bill but changes to Section 162(m) would not apply to a written binding contract in effect on November 2, 2017 that is not materially modified thereafter
Health Plans		
ACA's individual mandate	No provision	Nullifies (zeroes out) individual mandate penalty for months beginning after December 31, 2018

Budget Deadline

Ongoing funding for government operations is the second financial issue of concern for Congress this week. The current continuing resolution, or CR, is set to expire on Friday, December 8, leaving the government to shut down if an extension or final omnibus funding bill is not nailed down. Some believe that there will be multiple CRs as political chips for use on other goals.

Looking Ahead

We expect Congress will turn to preventing a government shutdown this week and then double down to iron out tax reform differences before leaving for the holidays.

Tax Bills' Indirect Effects

In addition to the direct effect on a benefit plan due to elimination or changes in features, other changes in the bills can have an indirect effect by changing the tax cost of an item. For example, lower corporate or pass-through tax rates will change the value of an employer's deduction of contributions to retirement or other benefit plans; the elimination of the medical expense deduction makes employer-provided health plan coverage more valuable.

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