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Congress Passes Tax Reform

This week, GOP House and Senate conferees came together to resolve their differences and pass the Tax Cuts and Reform Act. In the wee hours of December 20, the Senate voted to approve its bill; the House voted later that morning, ushering in the most significant tax reform in more than 30 years. The president is expected to sign the bill into law sometime before the end of the year. The new law will bring some changes for employers that affect employee benefits.

Tax Reform Will Impact Employee Benefits

The House and Senate have passed the Tax Cuts and Reform Act of 2017. Members of the conference committee released a summary of policy highlights and a joint explanatory statement. The House passed the bill by a vote of 224 to 201 and the Senate, 51 to 48. While the final bill more closely aligns with language in the original Senate version, it reflects a variety of compromises and concessions from GOP members on the joint committee. Below we provide a rundown of some of the changes that will affect employer-provided benefits and those that were discussed but ultimately excluded from the final bill.Benefit Provisions Impacted

The following changes are included in the final version of the Tax Cuts and Reform Act:

Retirement Plans

- Retirement plan loan repayments: Provides extra time for terminated employees to complete rollovers
- 2016 disaster area tax relief: Allows relief from 10% early distribution penalty, provides three-year ratable income inclusion, and permits repayments for distributions before 2018 by individuals in presidentially declared areas with disaster loss

Executive Compensation

- Executive compensation in tax exempt organizations: Imposes 20% excise tax on organizations for compensation in excess of $1 million and excess parachute payments paid to five highest-paid employees
- Section 162(m) limit on deduction for employee compensation: Repeals exceptions for performance-based compensation and commissions from $1 million yearly deduction limit, but not with respect to written binding contracts in effect on November 2, 2017 that are not materially modified thereafter

Note that a contract that is renewed after November 2, 2017 is treated as a new contract

Welfare and Fringe Benefits

- Employer tax credit for paid family and medical leave: Provides employers with a business credit of 12.5% to 25% of the wages paid to qualifying employees on paid family and medical leave. Available for wages paid in 2018 and 2019
- Qualified transportation fringe benefits: Eliminates employer deduction (e.g., business expense) for qualified transportation fringe benefits. Provides exception as necessary for ensuring the safety of an employee. Employee tax exclusion not repealed
- Suspends employee tax exclusion for qualified bicycle commuting expenses from January 1, 2018 to December 31, 2025
- Employee achievement awards: Eliminates employee tax exclusion and employer deduction if paid in cash, tickets, meals, lodging, and certain other awards; not eliminated for certain other tangible property. Effective for taxable years beginning January 1, 2018
- Qualified moving expense reimbursements: Suspends employee tax exclusion from January 1, 2018 to December 31, 2025 (except for active duty military)

Health Plans

- ACA’s individual mandate: Nullifies (zeroes out) individual mandate penalty beginning January 1, 2019

> **Comment.** Other than the individual mandate, the bill does not directly impact other provisions of the ACA. It does not affect the employer mandate or the reporting requirement. Additionally, while the nullification of the ACA’s individual mandate tax does not directly impact employer group health plans, some experts speculate that it could contribute to the destabilization of the individual market and increase the number of uninsured. Such destabilization could translate to increased costs for employers (e.g., state or local governments looking to private employers to help financially boost the marketplace through additional taxes).

Benefit Areas Not Impacted

While previous House or Senate versions addressed the following topics, they were not included in the final bill and thus have **no** impact:

Retirement Plans

- Hardship distributions
- In-service withdrawals for defined benefit and governmental 457(b) plans
- Nondiscrimination, coverage, and participation rules for closed defined benefit plans

Welfare and Fringe Benefits

- Employer-provided dependent care assistance programs
- Employer-provided child care credit (i.e., where employer owns, operates, or contracts with a day care facility)
- Employer-provided educational assistance programs
- Employer-provided housing exclusion
- Adoption assistance programs

Looking Ahead

Employers can breathe a sigh of relief that in the end retirement plans and welfare and fringe benefits were largely untouched, and though executive compensation was affected, it is not clear whether the modifications will actually result in any changes in compensation practices.

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