Congress Passes Tax Reform Bill

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On December 20, 2017, the House and Senate sent President Trump the Tax Cuts and Jobs Act for signature. The House of Representatives passed their version of the bill on November 16, 2017 while the Senate passed their version on December 2, 2017. Because the versions were not identical, a Tax-Bill Conference Committee was formed from members of the Senate and the House of Representatives to negotiate the text of the combined bill. After the finalized text was approved and released by the committee, the House and Senate each passed the combined bill (which happened on December 20th in the House and December 19th in the Senate) before it was sent to the White House.

Included in the law are a few employer-provided health and welfare-related provisions that can be summarized as follows:

- **Individual Mandate.** The law sets the Individual Mandate penalty to $0 starting in 2019. As a reminder, the Individual Mandate is the part of the Affordable Care Act that institutes a penalty on individuals that do not maintain health coverage during the year.

- **Medical Expense Deduction.** The law expands the medical expense deduction for 2017 and 2018 for qualified expenses exceeding 7.5% of adjusted gross income (from 10% under current law). In 2019, the deduction will increase to expenses in excess of 10% of adjusted gross income.

- **Transportation Benefits.** The law eliminates the employer's deduction for qualified transportation fringe benefits. In addition, except as necessary for ensuring the safety of an employee, the law would eliminate any deduction for providing transportation or any payment or reimbursement for commuting to work. This provision is effective for amounts paid or incurred after 2017. It appears qualified transportation fringe benefits remain excludable from the employee's income. It is the employer's ability to deduct the employer's cost for providing these benefits that is changed.
  - Bicycle Commuter Benefits. Suspends the exclusion from an employee's gross income and wages for qualified bicycle commuting benefits. Under existing law, employers may provide employees up to $20 per qualifying bicycle commuting month on a tax-

free basis. Effective January 1, 2018, any payment or reimbursement by the employer for bicycle commuting expenses will be subject to ordinary income tax and considered wages. The suspension will sunset after December 31, 2025.

- **Employer Tax Credit for FMLA Leave.** Finally, for 2018 and 2019 only, the law creates a tax credit for employers that pay employees while on FMLA leave. Vacation leave, personal leave, or other medical or sick leave do not count for this purpose. The credit is generally 12.5% of the amount of wages paid to qualifying employees (although it increases by .25% for every percentage point an employee's FMLA wages exceed 50% of their normal wages).
  - A qualifying employer is one who:
    - Allows all qualifying FT employees at least two weeks of annual paid FMLA leave (and a pro-rata amount for non-FT employees); and
    - Has a leave program providing for at least 50% of normal wages.
  - A qualifying employee is one who:
    - Has been employed for at least one year; and
    - Who had compensation in the previous year below 60% of the highly compensated threshold. The highly compensated threshold in 2018 is $120,000, meaning the compensation to be a qualifying employee for purposes of the credit is $72,000 for 2018.

Notably, the law **does not:**

- Repeal or otherwise change the employer mandate and applicable Form 1094-C and 1095-C reporting.

- Eliminate tax code provisions associated with dependent care flexible spending accounts and adoption assistance programs (under the original House bill, these were repealed).

- Address the high cost plan excise tax (i.e., the Cadillac Plan Tax) set to take effect on January 1, 2020.

- Reinstate Federal funding for cost-sharing payments to certain individuals buying individual and family coverage in the Marketplace.

Please note that this is not a full review of the law, but focuses solely on provisions that employers should be aware of in relation to the health and welfare benefits they provide.

The IRS will began reviewing the revised Code and issuing regulations and guidance to address the changes in the future. As guidance relates to health and welfare benefits, we will keep you apprised of relevant changes.

For the current text, visit:
https://www.congress.gov/congressional-report/115th-congress/house-report/466/1.