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EMPLOYEE BENEFITS ALERT

Employee Benefits Alert

March 21, 2018

This alert is intended to provide you with an update on the following employee benefit developments that we thought would be of interest:

Tax Cuts and Jobs Act reduces the health savings account limit for 2018

No more delay – new disability claims procedures go into effect on April 1, 2018

Budget Act makes additional retirement plan changes

Pension plan funding opportunity – taking advantage of 2017 higher corporate tax rates

IRS revamps fee structure for its voluntary correction program benefiting larger employers

For your reference – highlights of benefits and compensation changes in the Tax Cuts and Jobs Act

Please click on any of the above subjects to skip down.

Tax Cuts and Jobs Act reduces the health savings account limit for 2018

On March 5, 2018, the IRS announced that the 2018 contribution limit for a health savings account is $6,850 for an individual with family coverage, instead of the previously announced $6,900 limit. This reduction results from the Tax Cuts and Jobs Act, which changed the Consumer Price Index that is used to adjust individual tax brackets and health savings account contribution limits. There is no change to the $3,450 limit for individuals with self-only coverage. Employers that allow employees to make salary deferral elections to an HSA or that contribute to an HSA will need to adjust payroll and other systems as needed.

No more delay – new disability claims procedures go into effect on April 1, 2018

On January 5, 2018, the Department of Labor ("DOL") announced that it would proceed with implementing updated ERISA disability claims procedures effective April 1, 2018. Originally, these updated claims procedures (finalized in late 2016) were supposed to be effective January 1, 2018, but they were delayed so that the DOL could review them in light of President Trump's request that certain regulations be subject to additional scrutiny.

The new disability claims procedures build in extra protections for participants, similar to those currently in the health plan claims procedures. These protections include additional requirements designed to better limit conflicts of interest related to individuals who decide disability claims and appeals, expanded information to be included in denial letters, and additional opportunities for claimants responding on appeals.

The new procedures will require updates to plan documents and summary plan descriptions for plans that are required to have disability claims procedures. This means, in addition to ERISA-covered disability plans, these new regulations could also require updates to other plans, including retirement plans. Basically, if the claims adjudicator under a plan must make a determination of disability in order to decide a claim, the claim must be treated as a disability claim regardless of whether the plan is a pension plan or a welfare plan. However, if a plan provides a benefit which is conditioned on a finding of disability made by a party other than the plan (e.g., the Social Security Administration or the employer's long-term disability plan), then a claim for such benefits is not treated as a disability claim subject to the updated disability regulations.

Budget Act makes additional retirement plan changes

The 2018 Bipartisan Budget Act (the "Budget Act") that was enacted in February 2018 made changes to the permitted sources for hardship withdrawals and eliminated early penalties for certain hardship withdrawals, as described below.

Changes to hardship withdrawals

The Budget Act expands the sources for hardship withdrawals from a qualified plan to include contributions to a profit sharing or stock bonus plan, qualified nonelective contributions (QNECs), qualified matching contributions (QMACs) and any earnings on those contributions. In addition, plan participants are now allowed to take a hardship withdrawal without being required to first take the maximum loan amount available under the plan. The bill also provides for the removal of the 6 month suspension on employee contributions following a hardship withdrawal. These changes will be effective for plan years beginning after December 31, 2018.

Qualified wildfire distributions from retirement plans

The Budget Act waives the 10% early withdrawal penalty for retirement plan distributions taken before age 59½ for "qualified wildfire distributions." These are distributions made on or after October 8, 2017 and before January 1, 2019 from an eligible retirement plan to an individual whose principal home at any time from October 8, 2017 to December 31, 2017 was located in the California wildfire disaster area declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and who sustained economic loss as a result of the disaster. In addition, the limits on plan loan amounts are increased and loan repayments may be delayed for individuals affected by the wildfires. (The Tax Cuts and Jobs Act similarly waived the 10% early withdrawal penalty for individuals who suffered economic loss from a qualified disaster in 2016, described below.)

Plan sponsors who offer these qualified wildfire distributions to their employees will need to amend their qualified plans by the last day of the first plan year beginning on or after January 1, 2019.

Pension plan funding opportunity – taking advantage of 2017 higher corporate tax rates

Employers are permitted to make contributions to a qualified retirement plan that are deductible for the prior tax year up until the date that the employer's income tax return is due, including extensions, for such prior tax year. An employer might consider making a larger contribution to its defined benefit pension plan in 2018 to take advantage of the higher 2017 corporate tax rates (maximum rate of 35%) as compared to the lower 2018 rates (maximum rate of 21%). An employer will need to consult with its actuary to determine the maximum contribution that may be made.

IRS revamps fee structure for its voluntary correction program benefiting larger employers

The IRS recently changed the fee structure for making qualified plan corrections under the Voluntary Compliance Program (VCP) from one based on the number of plan participants to one based on the net assets in a plan. This change means that large employers generally will pay reduced fees, but smaller employers are likely to pay higher fees. The new structure also eliminates the reduced fees that were available to correct some of the more common errors such as non-amender failures or certain plan loan failures. The following new fees apply to all VCP submissions made on or after January 2, 2018:

Plan assets:	$0-$500,000	fee: $1,500
Plan assets:	$500,000-$10,000,000	fee: $3,000
Plan assets:	over $10,000,000	fee: $3,500

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Fringe Benefits

Employer Provided Moving Expenses. Employers may continue to deduct employer provided moving expenses. However, employees now must include employer provided moving expenses as taxable income, except for active duty members of the military who move pursuant to a military order.

Commuter Benefits. Employers can no longer deduct qualified transportation benefits or reimbursement to an employee for travel between home and work (except for expenses necessary to ensure the safety of an employee and reimbursements for bicycle commuting expenses). Employees continue to be able to exclude these commuter benefits from income (except for bicycle commuting expenses). Employers subject to a state law requirement to provide a pre-tax transportation program should comply with that state law and provide the benefit – even though the amounts withheld on a pre-tax basis are not deductible.

Non-tangible Personal Property Employee Awards. While confirming that tangible personal property awards for employee achievement continue to be deductible, the Tax Cuts and Jobs Act confirms that employers generally are not allowed to deduct amounts related to employee achievement awards that are given in cash, cash equivalents, gift cards, gift certificates, vacations, meals, lodging, tickets to events, stocks or other similar items.

Employee Meals. Employers generally can still deduct up to 50% of certain non-entertainment meal expenses (such as meals during business travel) or for meals provided for the employer's convenience on the business premises of the employer, but can now deduct only 50% of the expenses related to an employer-operated eating facility that meets certain requirements. Beginning in 2026, all meal expenses and expenses related to an employer-operated eating facility become fully non-deductible by the employer.

Entertainment Expenses. The employer deduction for business related entertainment, amusement and recreation expenses is no longer allowed, even when related to the active conduct of the employer's business.

Retirement Plans

Extended time to rollover plan loan offset amounts. Participants whose participation in a qualified retirement plan is terminated with an outstanding loan now have until the due date (including extensions) for filing their individual tax return for the year of the plan loan offset to rollover the amount of the unpaid balance of that loan to an IRA.

Qualified 2016 disaster distributions from retirement plans. The 10% early withdrawal penalty for retirement plan distributions taken before age 59½ is waived for distributions made on or after January 1, 2016 and before January 1, 2018 to an individual whose principal home at any time during the 2016 calendar year was located in one of the disaster areas declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and who sustained economic loss as a result of the disaster.

Plan sponsors who offered these 2016 disaster distributions to their employees will need to amend their qualified plans by the last day of the first plan year beginning on or after January 1, 2018.

Executive Compensation

Changes in compensation subject to $1 million limit. Public companies generally cannot deduct annual compensation that exceeds $1 million for certain executives, but now these companies can no longer take advantage of the exclusion of performance-based compensation from this limit. This limit applies to compensation payable to the chief executive officer, the chief financial officer and generally the three other most highly compensated executives (each, a "covered employee") – and now a covered employee in 2017 or later will automatically continue to be treated as a covered employee in future years.

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New deferral opportunity for stock options and restricted stock units for private company employees. Certain employees who participate in a broad based stock plan of a privately-held company now can elect to defer income taxes for up to five years on the income that arises upon the exercise of stock options or the receipt of stock in settlement of restricted stock units. This tax benefit is not available to the chief executive officer, the chief financial officer, a 1% owner or certain highly compensated employees and the family members of any of these individuals.

If you have any questions related to this article or would like additional information, please reach out to your contact in the Employee Benefits & Executive Compensation group:

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