December 26, 2017

Tax Law Signed - Repeals Individual Mandate Penalties

Congress has passed and President Trump has signed the Tax Cuts and Jobs Act, which, among other things, repeals the Affordable Care Act (ACA) individual mandate, creates a new tax credit for employers offering paid family and medical leave, and eliminates tax breaks for several fringe benefits. This represents the first major significant change to the U.S. Tax Code since 1986. The Act includes a reduction in the corporate tax rate to 21%, down from 35%, beginning in 2018, and also includes new rules for executive compensation, stock compensation, and retirement plans. We recommend employers work with their HR and finance departments and retirement advisers to evaluate these changes taking all of these new rules into account. The Act largely avoids direct changes to employer-sponsored health and welfare benefit programs. Summarized below are provisions that will be most relevant to health and welfare plan sponsors.

- **ACA Individual Mandate Repeal.** The ACA required individuals to have minimum essential health coverage (MEC), qualify for an exemption from the requirement, or pay a penalty tax. The Act permanently reduces the ACA's individual mandate penalties to zero, effective in 2019. For 2018, most individuals are still required to maintain coverage or pay a penalty when they file their 2018 federal income tax return. The public health insurance Exchanges and subsidized coverage continue as does the employer mandate and the ACA reporting and recordkeeping. The elimination of the individual mandate penalties is expected to result in instability in the individual insurance market which may cause cost shifting to employer-sponsored group health plans, but it is expected that Congress may mitigate this instability by passing legislation at a later date to provide additional funding to support the Exchanges.
- **Elimination of Several Fringe Benefit Tax Breaks Starting in 2018.** Employer contributions to an employee's qualified transportation fringe benefits (including those for public transportation, parking, and vanpools) will no longer be deductible from the employer's gross income. However, employees can still pay for these transportation costs on a tax-favored basis. The $20/month exclusion from employee income for bicycle commuting reimbursement is also suspended.
- **New Employer Tax Credit for Paid Family and Medical Leave.** A new business tax credit is created for employers providing 2-12 weeks of annual paid family and medical leave, effective 2018 through 2019. Many large employers likely will be eligible for this credit. We recommend employers work with their tax and labor advisers to understand the key details and evaluate current family and medical leave benefits to determine if (and to what extent) they may be eligible for and want to apply for this tax credit. We understand the IRS will need to issue implementing guidance on this new credit over the coming weeks.

We note that the Act does not delay or repeal the ACA's excise ("Cadillac") tax on employer-sponsored coverage. Congress is likely to work toward a delay or repeal as the 2020 effective date approaches. There is also continued push by members of Congress for relief from the employer mandate penalties and reporting requirements, but it is unlikely at this stage that any changes will be included in end-of-year legislation. We will continue to monitor developments over the coming weeks and months, and provide details on new and revised employer obligations as they take shape over time. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of our Legislative Updates, visit our online Resource Center.

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