

Total Rewards Public Policy Update Oct. 2018

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Agenda

- Tax Reform: H.R. 1 and Tax Reform 2.0
- Additional Tax Issues:
 - Cadillac Tax Delay
 - Mobile Workforce Efforts
- Healthcare Update
- Retirement Reform
- Department of Labor
- Paid Leave
- Executive Compensation Issues
- Pay Equity/Pay Transparency
- Election Issues to Watch

H.R. 1: Tax Cuts and Jobs Act of 2017 (TCJA)

Tax Reform: Overview

- Corporate tax rate permanently lowered to 21 percent
- Sets 7 individual tax rates, expire in 2025
- Increased standard deduction
- State and local tax deduction limited to \$10,000
- ACA individual mandate zeroed out in 2019

Tax Reform: Overview

- All eyes are on wages!!!
- Will tax reform result in an increase to wages in the US? More jobs?
- Media is following this closely and reporting when large companies announce changes to bonuses, compensation, 401(k) match and leave benefits

Tax Reform: What wasn't included...

- **No “rothification” for 401(k) contributions**
- **No change to tax treatment of employer-sponsored health care, employee exclusion remains intact**
- **No major changes to nonqualified deferred compensation, including equity and stock options – provision 409B was included in the original House and Senate bills but removed from the final bill signed into law**

Tax Reform: Benefit Changes

- **401(k) Loan Repayment:** Act provides additional time to roll over 401(k) loan at termination of employment – individuals have until Oct. of the following year (due date for tax returns with an extension) to repay the loan
- **Transportation Benefits:** Eliminates employer deduction for qualified transportation fringe benefit
 - Expense of providing these benefits is no longer deductible by an employer
 - Exclusion for employees is not affected
 - Qualified bicycle reimbursements are suspended until 2026

Tax Reform: Benefit Changes

- **Moving Expenses** – neither a deduction nor reimbursement is available for moving expenses incurred after 12/31/2017
- **Entertainment Expenses** - Disallows an employer's tax deduction for entertainment expenses
 - New 50% limitation on deduction for food and beverages that may be excluded from an employee's income – includes employer provided items such as coffee, donuts, and soft drinks
 - Eliminates deduction for cafeterias and meals furnished for the convenience of the employer on business premises beginning in 2026

Tax Reform: Benefit Changes

- **Employee Achievement Awards** – Act codifies Treasury regulations, specifically stating cash, cash equivalents, gift certificates are not considered “tangible personal property” and cannot be given on a tax-free basis.
 - Exclusion remains for items given as part of a “qualified plan awards”
 - Qualified plan awards may not discriminate in favor of highly compensated employees

Tax Reform: Benefit Changes

- **Employer Credit for Paid Family & Medical Leave** – creates a credit employers can qualify for if they meet certain criteria and pay wages while an employee utilizes family or medical leave
 - **IRS Notice 2018-71:**
 - To qualify employers have to have a **written** program providing all qualifying full-time employees with at least two weeks of paid family and medical leave.
 - Qualifying employee for 2018 is defined as being employed at least 1 year; paid up to \$72,000 in 2017; can't exclude classifications of employees
 - Part-time employees must be provided a commensurate amount of leave on a pro rata basis
 - Leave program must provided at least 50% of the wages normally paid to an employee
 - Credit is equal to 12.5% of the amount of wages paid, increased by .25% for each percentage point by which rate of payment exceeds 50%
 - Credit is only available for tax years 2018 and 2019

Tax Reform: Exec Comp

- **Sec. 162(m) - \$1 million limit on compensation for covered employees beginning on Jan. 1, 2018:**
 - Repeals exemption for performance-based compensation
 - Expands “covered employee” definition to include:
 - CFO/principle financial officer is now covered
 - All individuals who hold the position of either principal executive officer or principal financial officer at any time during the taxable year are now covered employees
 - Includes officers whose total compensation is required to be disclosed to shareholders, 3 highest-paid officers other than the principal executive officer or principal financial officer
 - Applies to taxable years beginning after Dec. 31, 2017
 - Transition rule applies for written binding contracts in effect on Nov. 2, 2017
 - IRS issued guidance on this provision in Aug. 2018
 - Specifically speaks to the definition of a “covered employee” and the operation of the grandfather (transition) rule

Tax Reform: Exec Comp

➤ **Excise Tax for Tax-Exempt Employers**

- 21% tax on remuneration, including non-cash benefits, above \$1 million for highest five compensated executives.
 - Tax does not apply to tax-qualified retirement plans, amounts that are excludible from the covered employee's gross income.
- Does include parachute payments

Tax Reform 2.0

Tax Reform 2.0: Passed the House in Sept.

➤ **Protecting Family and Small Business Tax Cuts Act**

- Makes many of the individual and business-focused provisions of HR1 permanent

➤ **Family Savings Act**

- Draws from Retirement Enhancement and Savings Act (S 2526) includes:
 - Establishes universal savings accounts
 - Reforms nondiscrimination rules for soft-frozen defined benefit plans
 - Allows expansion of open Multiple Employer Plans “MEPs” for defined contribution plans

➤ **American Innovation Act of 2018**

- Allows business to deduct up to \$20,000 in start-up expenses if they meet certain requirements

Additional Tax Issues: Cadillac Tax Mobile Workforce

Cadillac Tax on Employer-Sponsored Health Care

- **Excise Tax for Tax-Exempt Employers**
- Two-year delay of the 40% “Cadillac Tax” was included in the bill passed by Congress in Jan. to avoid a government shutdown
- New effective date is 2022
- WorldatWork continues to work with American Benefits Council and the Fight the 40 Alliance to fully repeal this tax

Mobile Workforce State Income Simplification Act

- Tax simplification bill sets a national threshold for when states can collect income tax from individuals that travel to their state to conduct business
 - States could collect tax only for individuals performing employment duties for more than 30 calendar days
 - Passed the House by voice vote on June 20
 - Bi-partisan legislation;
 - HR 1393 (57 cosponsors, 37Rs & 20Ds - House)
 - S 540 (60 cosponsors, 34Rs, 24Ds & 1Is - Senate)

Healthcare Update

Healthcare/Affordable Care Update

- Individual mandate was zeroed out in tax reform bill
- Employer mandate and reporting requirements remain intact
- Don't expect action on comprehensive healthcare reform this year

Healthcare/Affordable Care Update

- HSAs (HR 6311, HR 6199)
 - Expand pre-deductible HDHP coverage beyond preventive care to include up to \$250 (self-only) or \$500 (family) for services that could include telehealth or chronic disease management.
 - Allow individuals with HSAs to have "direct primary care service arrangements" and use HSA funds to pay the annual or monthly fees for those arrangements (capped monthly at \$150/individual and \$300/family).
 - Let individuals use employers' onsite medical clinics or retail clinics for certain services without risking HSA eligibility.
 - Allow individuals to transfer FSA funds into an HSA after enrolling in an HDHP.
 - Change the annual HSA contribution limits to match the annual HDHP out-of-pocket maximums.

Retirement Reform

Retirement Reform

- **Executive Order on Retirement: Aug. 31**
 - **Association retirement plans and open MEPs:** Gives DOL 180 days to consider proposed rules or guidance on allowing association of employers to team up, or pool together, and share administrative costs for their employees
 - **Directs IRS and Treasury Department to review rules surrounding minimum required distributions from retirement plans.**
 - **Directs Treasury and DOL to consider ways to improve notice requirements to reduce paperwork and administrative burdens**

Retirement Reform

- **Retirement Enhancement and Savings Act of 2018 (RESA)**
 - Expansion of the availability of “open multiple employer plans (MEPs),”
 - Revision of the Internal Revenue Code’s nondiscrimination rules
 - Removal of the cap on automatic escalation of employee deferrals
 - Annual lifetime income disclosure
 - A new safe harbor for plan fiduciaries

Department of Labor

Department of Labor Priorities

➤ FLSA Update

- Continue to wait on DOL to issue proposed overtime rules, for now the \$455 per week salary test remains the law
 - Latest official word from DOL is that the Noticed of Proposed Rulemaking is scheduled to be released in January 2019 per the spring regulatory agenda
- DOL held listening sessions in the following locations:
 - Sept. 7: Atlanta
 - Sept. 11: Seattle
 - Sept. 13: Kansas City
 - Sept. 14: Denver
 - Sept. 24: Providence

Department of Labor Priorities

- Department has started publishing opinion letters, <https://www.dol.gov/whd/opinion/flsa.htm>
 - Opinion letters are provided to help employers, employees, and other members of the public understand their rights and responsibilities under the law
- Payroll Audit Independent Determination “PAID” Program
 - Facilitates resolution of potential overtime and minimum wage violations under FLSA without litigation
 - Employers are encouraged to conduct self-audits, and if they discover overtime or minimum wage violations, to self-report those violations, correct mistakes and provide 100% of back wages due to their affected employees.
 - Goals are to resolve claims quickly, improve compliance and ensure employees receive the back wages they are owed
 - <https://www.dol.gov/whd/paid/>



Paid Leave

Paid Leave

Workflex in the 21st Century Act (H.R. 4219), Sponsored by Rep. Mimi Rogers (R-Calif.)

- Amends Employee Retirement Income Security Act (ERISA)
- Participating employers would extend paid leave to all full-time and part-time employees
- Paid leave requirements would be scaled to the size of the employer's workforce and the tenure of the employee, allowing employers to design a leave plan that meets the needs of the organization and its employees.
- Employers must offer at least one workflex arrangement to each eligible employee
- ERISA covered plans would pre-empt state and local paid leave and workflex laws

Paid Leave

Economic Security for New Parents Act, S.3345, Sen. Marco Rubio

- Creates an option for new parents to pull forward a portion of their Social Security to use for paid parental leave after the birth or adoption of a child.
- Parents taking the option will receive a Social Security benefit to use for at least two months of leave across their household.
 - The benefit amount is large enough that nearly all parents making below median family income of about \$70,000 will be able to take two months leave at over 70 percent of their wages.
 - Many parents, especially those with low incomes, will be able to finance longer three months of leave with the amount of the benefit.
- Two-parent households will be able to transfer their benefit to their spouse.
 - For example, one parent could use the benefit for two weeks of leave, while the other uses their individual benefit + the other parent's benefit for at least 6 weeks.
- “Stay-at-home” parents with an earnings history that meets eligibility requirements will also be able to take the option.
- Parents taking the option will delay the date at which they begin receiving Social Security retirement benefits by 3 to 6 months per benefit taken, as determined by the Social Security Administration each year.

Executive Compensation

Executive Compensation

- Proposed Dodd-Frank Rules on “Long-Term” regulatory agenda
 - Pay vs. Performance
 - Hedging Policy Disclosure
 - Clawback Policy
- SEC CEO-Pay Ratio Rule
 - Starting to see early results of the ratio disclosure rule
 - Companies are required to published the ratio for their first fiscal year beginning on or after Jan. 1, 2017

Executive Compensation

➤ Proxy Advisory Firm Legislation

- HR 4015 Corporate Governance Reform and Transparency Act of 2017
- Sponsored by Rep. Sean Duffy (R-Wisc.)
- Requires firms to register with the SEC, disclose potential conflicts of interest and establishes a process for companies to dispute proxy advisory firm's recommendations to shareholders
- Passed the House vote 238-182
- WorldatWork is working with US Chamber of Commerce and others to advance a companion bill in the Senate

Executive Compensation

- Proxy Advisory Process Updates from the SEC
 - SEC withdrew two 2004 no-action letters issued by staff on investment advisers' responsibilities in voting client proxies
 - Letters were viewed by many as a contributing factor allowing proxy advisory firms to operate despite clear conflicts of interest and lack of transparency
 - SEC staff hosting a Nov. 15 roundtable on the proxy process
 - Will focus on voting mechanics and technology, the shareholder proposal process and the role and regulation of proxy advisory firms
 - Meeting is open to the public and comments are being accepted

EEOC Strategic Plan

EEOC Strategic Plan

- Waiting on Senate to confirm Trump's nominees, Janet Dhillon (chair), Daniel Gade (commissioner) and Sharon Fast Gustafson (general council)
- FY18 Budget saw an increase for sexual harassment projects, both enforcement and prevention
- Wellness Rules: ADA and GINA wellness rules have been vacated effective Jan. 1, 2019

Pay Equity/Pay Transparency

- 12 states and/or cities have passed laws prohibiting employers from asking a job candidate about their salary history
- Many more states/cities are considering similar laws
- This issue isn't garnering a lot of attention at the federal level now, but very likely could if control of Congress changes this fall.
 - Unclear, where President Trump stands on this issue.....

Election Issues to Watch

2018 Election Issues to Watch

- Democrats are expected to do well in the midterms.
- It's possible for Democrats to win majority control of both the House and Senate.
- Democrats Priorities if they control Congress:
 - Sexual Harassment/Discrimination #MeToo #TimesUp
 - Equal Pay
 - Minimum Wage
 - Paid Leave
 - Repealing Tax Reform



2018 Election Issues to Watch

➤ Brand New Congress

- New Speaker: Speaker Paul Ryan is not running for re-election
- 56 representatives are not seeking re-election to the U.S. House: 38 Rs and 18 Ds
 - Additionally 15 reps. of the 2016 left early
 - 71 House seats with no elected incumbent running
- 35 Senate seats are up for reelection
 - 26 are held by Ds and 9 by Rs. Democrats need to gain 2 seats to take control of the chamber



Questions?

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