Employee Benefits and Tax Reform: What You Need to Know

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The "Tax Cuts and Jobs Act" signed by President Trump on December 22, 2017, thankfully did not turn retirement plans into a new source of tax revenue, but that does not mean the employee benefits world went completely unnoticed. Below are some of the key employee benefits changes, which were addressed and are generally effective for tax years beginning January 1, 2018, and ending December 31, 2025. Please note that this article does not discuss executive compensation changes that were made by the Act.

Fringe Benefits – Qualified Transportation Benefits and Other Transportation Expenses

Qualified transportation benefits are common fringe benefits, especially in densely populated areas. As of January 1, 2018, the Act removed employers' abilities to deduct expenses associated with numerous qualified transportation benefits such as:

- transit passes;
- qualified parking;
- qualified bicycle community reimbursements; and
- commuter transportation in a highway vehicle between the employee's home and workplace.

The removal of the deduction does not mean that employers can no longer provide these benefits; however, it does mean employers will not enjoy a corresponding expense deduction for providing such benefits. This change may lead some employers to stop offering qualified transportation benefits.

Employers are also no longer permitted to deduct amounts paid to employees for commuting to and from work, unless the expense is incurred to ensure the safety of the employee.

In addition, employees may no longer exclude qualified bicycle commuting reimbursement from income. The Act requires these reimbursements to be included in employees' income for tax years beginning January 1, 2018. Notably, employees may still exclude other qualified transaction reimbursements under Internal Revenue Code Section 132(f).

The new treatment of previously qualified bicycle commuting reimbursements will require:

- changes to employers' recordkeeping systems, assuming such reimbursements continue;
- updates to payroll process codes to include these reimbursements as taxable income;

- a review of plan documents, including enrollment forms and expense forms, to reflect these changes; and
- communications to employees about these changes.

Fringe Benefits – Meals and Entertainment Expenses

The Act also changed common corporate deductions for business meals and entertainment expenses. The current 50% meals and entertainment deduction was modified to (1) include meals provided on company premises for the employer's convenience and (2) eliminate the business entertainment expense in its entirety.

Moving Expenses

Some companies reimburse moving expenses as part of recruitment (either attracting new talent or incentivizing existing talent to relocate). Like transportation reimbursements, the Act does not prohibit employers from providing these reimbursements, but the reimbursements are now treated as taxable wages (unless the taxpayer is an active duty member of the armed services). The result of this change in the law is that employees will now have more out-of-pocket expenses to move for employment purposes, unless employers increase the amount of moving reimbursements in an amount equal to the taxes that will be owed on the reimbursements. Also note that employees may no longer deduct costs incurred for moving expenses on their tax returns. The Act did not change the ability for employers to deduct moving reimbursements for tax purposes.

Retirement Plan Loans

The Act creates a new offset against retirement plan loans if such loans are triggered for repayment due to a plan termination or a participant's separation from service. A "qualified plan loan offset amount" may be rolled over to an eligible retirement plan without tax consequences, if such rollover occurs by the individual's tax return due date (including extensions) of the year in which the distribution occurs. Prior to the Act, the offset would have had to be contributed to an eligible retirement plan no later than the 60th day after the offset to not have tax consequences. HR professionals should review plan documents to determine if loan language needs to be modified to reflect this change. Even if a plan document does not need to be amended, summary plan descriptions and loan procedures should be reviewed. In addition, companies will need to coordinate with any third-party loan service providers to ensure new administrative steps are implemented to reflect the new offset.

New Tax Credit for Certain Family Medical Leave Act (FMLA)

The Act created a new "for a limited time only" incentive for employers that provide paid FMLA to employees. Although employers are not required to provide paid FMLA, some employers do so as a benefit. Effective for tax years beginning on or after January 1, 2018, through December 31, 2019, the Act provides a tax credit for employers to recoup a portion of the compensation paid to employees on paid FMLA leave.

The employer must offer at least two weeks of paid leave to all qualifying full-time employees at a rate of at least 50% of the employees' regular earnings to receive a 12.5% credit of the wages paid. Any amount paid above 50% of wages is eligible for an increased credit in the amount of .25 percentage points for each percentage point higher than the 50% minimum (capped at 25% of wages). Note that employers must (1) adopt a written policy regarding the paid FMLA leave benefit and (2) offer such benefit to part-time employees on a pro-rated basis. The credit applies to FMLA leave only and may not be applied to any other type of leave the employer may provide to employees (such as vacation, personal, medical, or sick leave). Employers should note that the credit can only be applied to employees who were paid no more than $72,000 in 2017.

Companies considering taking advantage of this new credit should:

- Review existing paid leave programs to determine if such policies qualify for the new tax credit.

- Conduct a cost/benefit analysis to determine whether to amend a current paid FMLA policy to qualify for the tax credit.
- Be sure to take into account the limited "life" of such credit (i.e., the credit expires for tax years that begin after December 31, 2019).
- Communicate any changes to the FMLA leave policy to employees in a clear manner.

If you have any questions on this information, please consult a member of the Krieg DeVault LLP **Employee Benefits Practice Group** for assistance.