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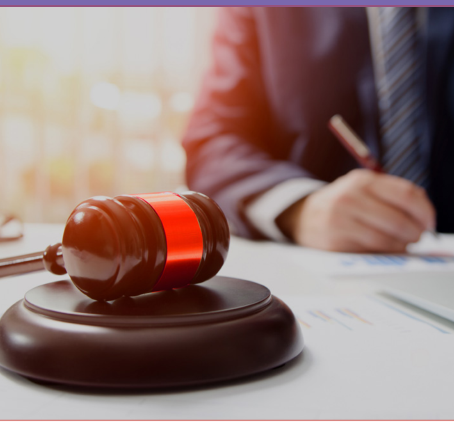
Legislative Update



Year-End Tax Legislation Includes Many Elements Affecting Employers

On December 20, President Trump signed into law two spending bills to fund the government through September 30, 2020: H.R. 1158 – Consolidated Appropriations Act of 2020, and HR 1865, the Further Consolidated Appropriations Act. HR 1865 contains several important tax and other provisions affecting employers; in particular, elements designed to expand and facilitate retirement savings. Selected provisions are highlighted below.

High-Cost Health Coverage Tax (aka "Cadillac tax") Repealed

HR 1865 repealed three Affordable Care Act ("ACA") taxes, including the "Cadillac tax," the medical device tax, and the health insurance tax ("HIT"). The "Cadillac tax," initially enacted as part of the 2010 ACA and intended to counter health-care cost increases, was a 40 percent tax on employer health coverage costing over $11,200 a year for individuals and $30,150 for families. It was scheduled to take effect in 2022.

Repeal of Tax on Nonprofit Organizations for Transportation and Parking Benefits

The Tax Cuts and Jobs Act imposed a tax on transportation fringe benefits offered to employees by tax-exempt organizations, which was intended to provide parity with for-profit organizations, which could no longer deduct expenses related to qualified transportation fringe benefits. Such benefits had the effect of increasing the taxable "unrelated business income" of otherwise tax-exempt organizations by any amounts paid by such organizations for qualified transportation fringe benefits or parking facilities and qualified parking benefits under Section 132(f). This repeal is retroactive to 2018.

SECURE Act Retirement Plan Provisions

The legislation includes many elements from the *Setting Every Community Up for Retirement Enhancement Act* ("SECURE Act"), which contains several changes designed to expand and facilitate retirement savings, such as an increased limit for automatic escalation of savings percentages from 10 percent to 15 percent, and provisions to encourage multiemployer plans. A few examples of changes adopted in the Act follow:

The legislation provides new incentives for businesses to offer retirement plans, thereby reducing employers' administrative costs. Eligible small employers are entitled to an annual start-up tax credit for three years, which was previously capped at $500 annually. The SECURE Act increases this cap to up to $5,000 annually for three years. Small employers that adopt automatic enrollment can also qualify for an additional $500 credit for three years. These expanded credits are available starting in 2020.

Another provision requires employers to provide participants with an estimate of the annuity income that participant accounts could produce. The Department of Labor will provide detailed guidance and model disclosures, which will become part of participants' annual statements. Employers will have at least 12 months after such guidance is published to implement the disclosures. There is also a fiduciary safe harbor for selection of a lifetime income provider.

The SECURE Act also requires employers to permit long-term part-time workers to participate in 401(k) plans, opening eligibility to employees that complete either 1,000 hours within one year or 500 hours in each of three consecutive years. However, employers are not required to provide matching contributions for employees who become eligible for the 401(k) plan under this rule. This is generally effective for plan years beginning after 2020.

Birth or Adoption Withdrawals: The Act permits participants to take penalty-free withdrawals of up to $5,000 from a qualified retirement plan for expenses related to the birth or adoption of a child, for up to one year following such birth or adoption. This provision may be implemented almost immediately — after December 31, 2019.

The Act increases the age for required minimum distributions from age 70½ to 72, enabling certain workers and retirees to delay payouts from a retirement plan.

"Tax Extenders"

The Act extends several tax credits of interest to employers which expired after 2017 or 2018, or which were scheduled to expire after 2019, but are now renewed/extended through 2020:

- Indian Employment Credit
- Empowerment Zone Tax Incentives
- Work Opportunity Credit

The Work Opportunity Tax Credit (WOTC) provides employers with a tax incentive to hire employees from certain groups, and has proven effective in helping specified groups; for example, those who were previously incarcerated; persons unemployed for long periods, disabled individuals and veterans.

Tax Credit for Paid Family and Medical Leave Extended Through 2020

Beginning in 2018, eligible employers were able to claim a general business tax credit equal to 12.5 percent of wages paid to qualifying employees during any period in which such employees are on paid family and medical leave (as defined under section 45S of the Internal Revenue Code), if the rate of payment under the program is at least 50 percent of the wages normally paid to an employee. The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. For example:

- For an employee on FMLA leave who is paid 60 percent of their normal wages, the credit would be 15 percent of the wage amount (12.5 percent plus (10 percent x 0.25 = 2.5 percent).
- An employee paid 100 percent of their normal wage amount would generate a credit equal to 25 percent of the wage amount (12.5 percent plus (50 percent x 0.25) = 25 percent).

The maximum amount of family and medical leave that may be taken into account with respect to any employee for any year is 12 weeks. If an employer provides paid leave as vacation leave, personal leave, or other medical or sick leave, this paid leave would not be considered to be family and medical leave. Leave paid for or required by state or local laws do not qualify.

This tax credit was set to expire after 2019, but is now extended through 2020. For details on the credit for Paid Family and Medical Leave, see IRS **Notice 2018-71** and IRS **FAQs**.

Disaster Relief Provisions

The Act provides for an Employee Retention Credit applicable to any disaster area declared after January 1, 2018 through February 18, 2020. (California Wildfire areas are excluded since relief was previously enacted.) The credit is 40 percent of wages up to $6,000 per employee for up to 150 days for an employer which conducted business in a qualified disaster zone during the incident period and which was inoperable for a time as a result of the disaster. The credit may apply to wages to employees who performed no services, or performed services at a place of employment other than the principal place of employment, or performed services before significant operations resumed.

The Act also includes several provisions that facilitate the ability of individuals affected by a recognized disaster to withdraw from a retirement account without penalty.

Please note that this summary is merely intended to identify certain selected provisions in this legislation that may affect employers. There are many other potentially relevant provisions and definitions that may apply. Interested employers should also consult with appropriate legal and tax advisors for further details.

ADP Compliance Resources

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Updated on December 23, 2019