President Trump Signs The Tax Cuts And Jobs Act Of 2017 Into Law

Wesley Covert
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After many revisions and hurdles, Congress finally settled on a tax reform package called the Tax Cuts and Jobs Act of 2017 (the Act) which was signed by President Trump on December 22, 2017. The following include a few highlights of the Act related to employee benefits, executive compensation, and employment law:

- *Elimination or suspension of tax deductions of certain fringe benefits*. For expenses incurred or paid after December 31, 2017, deductions for entertainment expenses, certain meals provided to employees for the convenience of the employer, onsite gyms, and employee transportation fringe benefits (e.g., parking and mass transit) are not allowed. However, employees may still exclude from income qualified transportation fringe benefits. The Act also suspends both the business deduction and the exclusion from taxable income for recipients of employer-paid moving expenses for taxable years 2018 through 2025, except for certain active-duty members of the armed forces.

- *Elimination of deductions for amounts paid related to a settlement of a sexual harassment claim subject to a nondisclosure agreement*. Effective for amounts paid or incurred after the enactment date of the Act, no deduction is allowed for any settlement, payout, or attorney fees related to sexual harassment or sexual abuse if such payments are subject to a nondisclosure agreement.

Attorneys

Wesley H. Covert

Practice Areas

Employee Benefits and Executive Compensation

Executive and Non-Qualified Deferred Compensation Benefits

Health and Welfare Benefit Plans

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515 North State Street, Suite 2400, Chicago, Illinois 60654 t: 312.467.9800 f: 312.467.9479

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- *Elimination of the "individual mandate" of the Affordable Care Act (ACA)*. Under the terms of the ACA, the "individual mandate" provides that individuals must be covered by a health plan that provides at least a specified minimum coverage or be subject to a tax. The Act eliminates this tax, therefore essentially eliminating the individual mandate, beginning after December 31, 2018.

- *New employer credit for paid family and medical leave*. The Act allows eligible employers to claim a business credit equal to 12.5% of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave, if the rate of payment under the paid-leave program is at least 50% of the wages normally paid to the employee. The credit is increased for each percentage point by which the rate of payment exceeds 50% of wages, up to a maximum credit of 25%. This new credit is generally effective for wages paid in taxable years beginning after December 31, 2017; but sunsets for taxable years beginning after December 31, 2019.

- *New excise tax on excess tax-exempt organization executive compensation*. A 21% excise tax is imposed on compensation, with limited exclusions, in excess of $1 million paid to a tax-exempt organization's five highest paid executives.

- *New opportunity to elect to extend the receipt of certain deferred compensation*. Internal Revenue Code Section 83 provides that if an employer transfers stock to an employee in connection with services performed, the employee must generally recognize income for the tax year in which the employee's right to the stock is transferable, or is not subject to a substantial risk of forfeiture. Under the Act, with respect to certain stock transfers after December 31, 2017, a qualified employee may elect to defer for up to five years, recognition of the amount of income attributable to the qualified stock transferred to the employee by the employer. The election must be made no later than 30 days after the first time the employee's right to the stock is substantially vested, or is transferable, whichever occurs earlier. Additional rules, conditions and notice requirements apply.

- *Modification of limitation on excess executive compensation*. Applicable to taxable years beginning after December 31, 2017, the Act repeals the exception to the $1 million deduction limitation under Internal Revenue Code Section 162(m) for commissions and performance-based compensation for publicly-held companies. The definition of covered employee under the Code is amended to include the CEO, the CFO, and the three other highest paid employees. Once an employee qualifies as a covered employee, his/her compensation is subject to the $1 million limitation as long as the executive receives compensation from the company. There is a transition rule for written binding contracts in effect as of November 2, 2017, that are not modified thereafter in any material respect.

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