

# The Death of Reserved Employee Parking?

## Labor & Employment Law Update

By Sara Zorich on March 27, 2019

The Tax Cuts and Jobs Act, passed in December 2017, is continuing to hit employers and employees in unanticipated ways. The latest impact is on special parking spaces for executives, employees of the month and employee reserved parking spots. Generally, under the IRS Tax Code ("Code"), an employer is not able to take a tax deduction for qualified transportation fringes ("QTFs") provided to an employee. This includes parking an employer provides to its employees (i.e., the parking lot where the employees park). However, the Code provides two exemptions allowing the employer to take the tax deduction if they do either of the following: (1) tax the employee for the parking benefit or (2) make the parking available to the public.

- Option 1 – Normally the "employee benefit" of parking in the employer's parking lot would be excluded from an employee's income. However, if the "employee benefit" is greater than the fair market value limitation under the Code, then that amount must be included in the employee's income. Obviously, increasing an employee's taxable income based on the parking spot they use to do their job would be a very unpopular result for the employer's workforce.
- Option 2 – Instead of taxing the employee for the parking benefit, a more popular exception is making the employer parking not only available to employees but also to the general public. However, this exception is not applicable under the amendments to the Code when an employer provides reserved or private parking spots that are only available to employees. If the employer maintains "reserved employee spots" (e.g., for the employee of the month or certain executives) then the employees must be taxed or the employer loses its business tax deduction.

The IRS has issued Notice 2018-99 that allows companies to change their parking arrangement on or before **March 31, 2019** for retroactive effect to January 1, 2018. Thus, if you have "employee only" or "reserved spots" you must immediately review either eliminating the reserved spots (if the employer wants to keep the business deduction) or review the tax effect of the QTF and how this will impact both the business taxes and the employee taxes.