The recently enacted Tax Cuts and Jobs Acts (the “Tax Reform Act”) made significant changes to the Internal Revenue Code. Although there was a lot of press coverage about potential changes that could significantly impact employer-provided retirement, welfare, and fringe benefits, the reality is that most of the changes did not make it into the final version of the law and, as a result, tax reform did not make any sweeping changes in this area. Notwithstanding that this was much ado about (almost) nothing, nearly all employers, including public, private, and non-profit, need to know and become familiar with what has changed in the new rules and where the status quo remains the same for employer-provided retirement, welfare, and fringe benefits.

The Tax Reform Act made significant changes to public company executive compensation.
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<td>No Mandatory “Rothification” of Retirement Plan Contributions: The Tax Reform Act does not include any requirement to further limit the amount of pre-tax contributions that may be made to retirement plans.</td>
<td>Deadline to Make Loan Offset Payments Extended: Under prior law, a 401(k) or 403(b) plan participant could “repay” a plan loan offset that occurs as a result of termination of employment or plan termination as long as he or she makes an equivalent deposit to an IRA or another eligible plan within 60 days of the date of the loan offset distribution. Under the new law, the deadline for making a plan loan offset deposit is extended to the due date of the individual’s tax return (including extensions) for the year of offset. This relief does not extend to any other types of deemed distributions (e.g., as a result of an active employee’s failure to timely repay a plan loan).</td>
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<td>Catch Up Contribution Rules: The Tax Reform Act does not include the proposal to eliminate catch-up contributions for employees receiving wages of $500,000 or more.</td>
<td>Practical Considerations: This is primarily a tax issue for the employee, so no employer action or plan amendment is needed unless the Plan specifically address this issue and the related timing. Note, however, that this new provision will likely increase the number of requests that employers receive with respect to these types of deposits because employees will have a longer period of time to acquire the funds.</td>
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<td>403(b)/457(b) Special Catch Up Contribution Rules: The Tax Reform Act does not include the proposal to eliminate the ability for participants to make special 403(b) and 457(b) catch-up contributions.</td>
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<td>Aggregation Rules for Determining 402(g) Limit: The Tax Reform Act does not include the proposal to aggregate deferrals to a 457(b) plan with deferrals to a 401(k) and/or 403(b) for purposes of deterring the annual limit.</td>
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<td>Aggregation Rules for Determining 415(c) Limit: The Tax Reform Act does not include the proposal to aggregate all contributions to any defined contribution retirement plan (401(k), 403(b), and 457(b)).</td>
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<td>Aggregation Rules for</td>
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### Determining 415(c) Limit:
The Tax Reform Act does not include the proposal to aggregate all contributions to any defined contribution retirement plan (401(k), 403(b), and 457(b)).

### Post-Employment 403(b) Contribution Rule:
The Tax Reform Act does not include the proposal to eliminate the rule that permits contributions to a 403(b) plan for up to five years after the employee’s termination.

### Hardship Distribution Sources:
The Tax Reform Act does not include the proposal to make QNECs, QMACs, and earnings on contributions available for hardships.

### Requirement to Take Loans Before Hardship and Impose 6-Month Suspension:
The Tax Reform Act does not include the proposal to eliminate the rules that a participant must take all available plan loans before becoming eligible for a hardship withdrawal or that contributions must be suspended for 6 months following a hardship withdrawal (under the hardship “safe harbor”).

### Nondiscrimination Testing for Frozen Defined Benefit Plans:
The Tax Reform Act does not include the proposal to provide relief from coverage testing for a “grandfathered” group of employees in closed defined benefit plans.

### Additional Relief for Taxation of 2016 Disaster Withdrawals:
Under prior law, hardship distributions from 401(k), 403(b), and 457(b) plans and IRAs are included in the participant’s taxable income in the year of distribution and generally subject to a 10% early withdrawal tax if the participant is under age 59 1/2.

Under the Tax Reform Act, eligible distributions related to 2016 disaster area events (as declared by the President during calendar year 2016) made between January 1, 2016 and January 1, 2018 are exempt from the 10% early withdrawal penalty and can be taxed ratably over 3 years. In addition, a plan may permit participants to repay any such distribution to the plan within 3 years without penalty.

**Practical Considerations:** Employers will not be required to report these distributions for purposes of the 10% early withdrawal penalty. A plan amendment will be required if the employer would like to permit participants to repay eligible distributions to the plan over a 3-year period. An employer is not required to permit repayment.

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### Provisions Related to Health and Welfare Benefits Effective January 1, 2019

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**Employer Mandate Under the Affordable Care Act (ACA):** Employers must continue to comply with the employer mandate and its related tax reporting.

**Dependent Care Flexible Spending Accounts:** The Tax Reform Act does not include the proposal to eliminate dependent care flexible spending accounts by 2023.

**Income Exclusion for Adoption Assistance Programs:** The Tax Reform Act does not include the proposal to repeal the income exclusion for adoption assistance programs.

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**Elimination of the Individual Mandate Under the ACA:**

The Tax Reform Act essentially eliminates the individual mandate -- the Affordable Care Act’s (ACA) requirement that an individual must obtain health coverage or potentially pay a tax penalty -- effective January 1, 2019 (penalties are reduced to zero dollars after December 31, 2018).

**Practical Considerations:** The Tax Reform Act does not impact employer obligations under the ACA, it only changes the ACA with respect to the individual mandate. Therefore, all other ACA requirements are still in effect, including the employer mandate -- the requirement that large employers must offer specified health coverage to a sufficient number of full-time employees (and dependents) or potentially pay a tax penalty -- and its related tax reporting. In fact, the IRS has begun enforcement of the employer mandate, as discussed in our recent newsletter (found [here](#)).

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**Provisions Related to Fringe Benefits Effective January 1, 2018**

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Limitations Related to Employee Fringe Benefits:

Employers may not deduct qualified transportation and commuting expenses, except as necessary for ensuring employee safety.

The employee exclusion for qualified bicycle commuting reimbursement is eliminated through 2025.

Employees may not exclude or deduct qualified moving expense reimbursements through 2025.

Employee achievement awards that are not tangible property, such as cash, cash equivalents, gift cards, gift coupons or gift certificates (other than arrangements conferring only the right to select from a limited array of items pre-selected by the employer), vacations, meals, lodging, tickets to theater or sporting events, stocks and bonds, are not eligible for special tax treatment. [Note that this is characterized as a clarification of, rather than change to, the existing rules.]

Employer deductions for meals and entertainment expenses are eliminated. Employee cafeteria expenses are deductible, subject to a 50% limit through 2025. Thereafter, no such expenses are
Practical Insights: Some of these items are effective tax increases included within a tax cut bill, i.e., while nominal tax rates decline, the definition of income that is subject to tax increases. Employers should ensure that tax and payroll systems are programmed correctly. Employees, especially executives, may start to request tax gross-ups for moving expenses.