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What's New in the Employee Benefit World in 2018?

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Presenters

- **Nancy Keppelman** is Of Counsel based in Butzel Long's Ann Arbor office practicing in the areas of employee benefits and executive compensation law. Ms. Keppelman became a fellow in American College of Employee Benefits Counsel ("ACEBC") in 2002. Nancy is listed in *The Best Lawyers in America* for employee benefits expertise, and is among a handful of Michigan lawyers given the highest rating in employee benefits law by *Chambers USA*, America's Leading Lawyers for Business. She is also a past member of the Tax Council of the Michigan State Bar and past president of the Women Lawyers Association of Michigan – Washtenaw Region.

- **Lynn McGuire** is a shareholder based in Butzel Long's Ann Arbor office. She concentrates her practice in the area of employee benefits law. Ms. McGuire is recognized in *Dbusiness Top Lawyers* in Metro Detroit, *Michigan Super Lawyers* and *Chambers USA* for her work in Employee Benefits Law.

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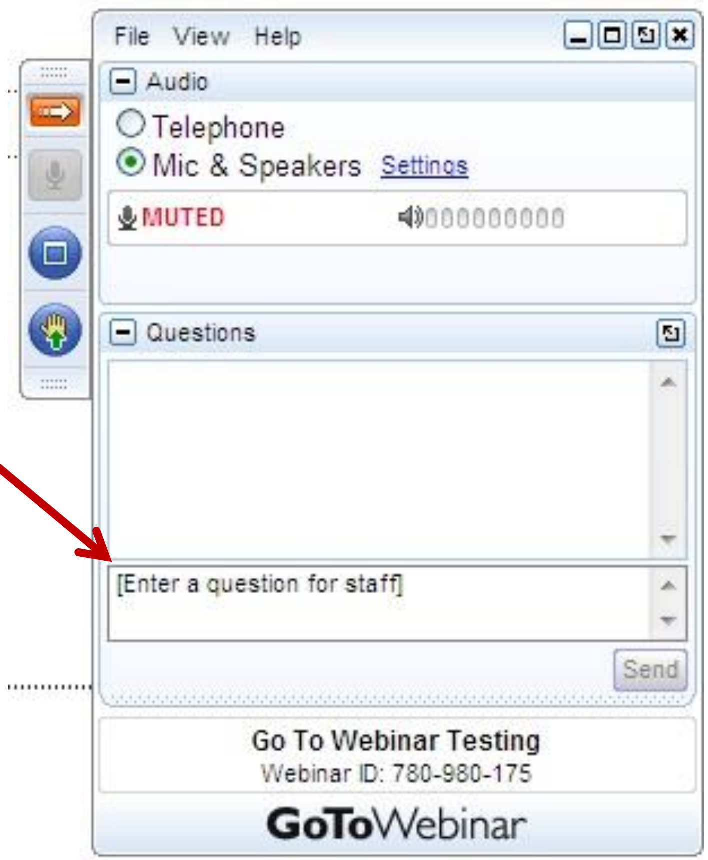
You are welcome to submit questions throughout the presentation

1. Use the control panel to enter your question.
2. Type a question, then click **Send**.
3. There is *no* need to use the Raise your hand icon.
4. Presenters will answer questions at the end of the program, as time allows.



Overview

- Tax Cuts and Jobs Act (December 2017)
  - Participant Loan Changes
  - Hardship Distribution Changes
- Federal Budget Agreement (2018)
  - Executive Compensation Changes
- IRS/Treasury Department Changes
  - IRS Determination Letter Program Changes

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Participant Loans

"Do you have any other collateral...
besides this e-mail from a Nigerian prince?"

Participant Loans

Background:

- Employers allow participants in qualified defined contribution plans to take participant loans, to encourage them to contribute to the plan; assuring them the money will be available in the event of an emergency

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Participant Loans

Background:

- When employment terminates, and payroll reduction repayment ends, most plans provide for loan to default

- ***This triggers taxation of the entire outstanding loan balance, and often triggers early distribution tax penalty***

Participant Loans

Note:

- Plan/loan policy can be amended to permit loan repayment post-termination
- Plan/loan policy can be amended to permit rollover of participant loans upon employment termination, to avoid taxation

Participant Loans

Background:

- A distribution of a plan loan offset occurs when the loan is defaulted upon the employee's termination of employment or within a specified period thereafter

- Participants have 60 days from the date loan offset occurs to rollover the loan offset to an IRA or qualified plan

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Participant Loans

New Provision- Extended Period:

- Plan loan offset amounts distributed after 2017 have an extended rollover period -- can now be rolled over up to the due date for filing the individual's tax return, including extensions

Participant Loans

Action Required:

- Update ***Special Tax Notice***, or provide supplemental Special Tax Notice (until IRS issues new Special Tax Notice) to notify affected participants of extended deadline

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Hardship Distributions

"I reviewed your investments and set you up for early retirement. On your last day of work, you can afford to leave at 4:30 instead of 5:00."

Hardship Distributions

Background:

- The Tax Code permits qualified defined contribution plans to provide in-service distribution from participant's account balance in the event of certain hardships, but must ***stop*** participant elective deferrals ***for 6 months*** following hardship distribution

Hardship Distributions

Background:

- The Tax Code permits a hardship distribution of elective deferral contributions under a CODA only if the distribution is made on account of an immediate and heavy financial need of the employee, and the money is necessary to satisfy the financial need

Note:

- Amounts attributable to employer matching and discretionary contributions (but not QNECs or QMACs)are not subject to these restrictive hardship rules, so plan can have two sets of hardship distribution rules

Hardship Distributions

Background:

- The determination of need and of the amount necessary to meet the need must be made in accordance with nondiscriminatory and objective standards set forth in the plan

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Hardship Distributions

Background:

- Safe-harbor -- distribution deemed to be on account of immediate and heavy financial need if it's for:
  - expenses for medical care for the employee, the employee's spouse, or any dependents of the employee
  - costs for purchase of principal residence for the employee (not mortgage)

Hardship Distributions

Background:

- (Cont.)
  - tuition, educational fees, room and board expenses, for the next 12 months of post-secondary education for the employee, or the employee's spouse, children, or dependents
  - payments necessary to prevent the eviction from the employee's principal residence or foreclosure on mortgage
  - funeral expenses for the employee's deceased parent, spouse, children, or dependents; or
  - repairs to employee's principal residence that would qualify for the casualty deduction

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Hardship Distributions

Background:

- A distribution is not treated as necessary to satisfy an immediate and heavy financial need to the extent it exceeds the amount required to relieve the financial need, or may be satisfied from other resources that are reasonably available to the employee

Hardship Distributions

Background:

- Safe-harbor -- distribution deemed necessary to satisfy an immediate and heavy financial need if:
  - It does not exceed the amount of the employee's immediate and heavy financial need (which may include anticipated income taxes or penalties resulting from the distribution
  - The employee has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under the plans maintained by the employer

Hardship Distributions

New provision – Disaster Relief:

- Congress may waive the 10% early distribution penalty for qualified hurricane or disaster distributions that are repaid within a limited time frame

- IRS can allow hardship distributions to those affected by storms and other disasters, including relief from verification or other procedural requirements, and a window to amend a plan to add hardship distribution provisions consistent with the relief

Hardship Distributions

New provisions – Disaster Relief:

- Casualty safe harbor – starting first plan year on or after January 1, 2018, damage to principal residence must be due to Presidentially-declared natural disaster

Hardship Distributions

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Hardship Distributions

New provisions – Full Access:

- QNECs and QMACs – starting first plan year on or after January 1, 2019, amounts attributable to employer QNECs and QMACs can be part of a hardship distribution

Hardship Distributions

New provisions – No 6 Month Delay:

- Starting first plan year on or after January 1, 2019:
  - Plan no longer must stop participant elective deferrals to plan for 6 month period following hardship distribution –
  - Participants no longer must take plan loan before taking hardship

Hardship Distributions

Action Item:

- Must amend Plan document when choosing to implement any new Disaster Relief hardship provisions

- Must amend Plan document when choosing to remove 6 month delay

- May need to amend Recordkeeping or Third Party Administrative Services agreement

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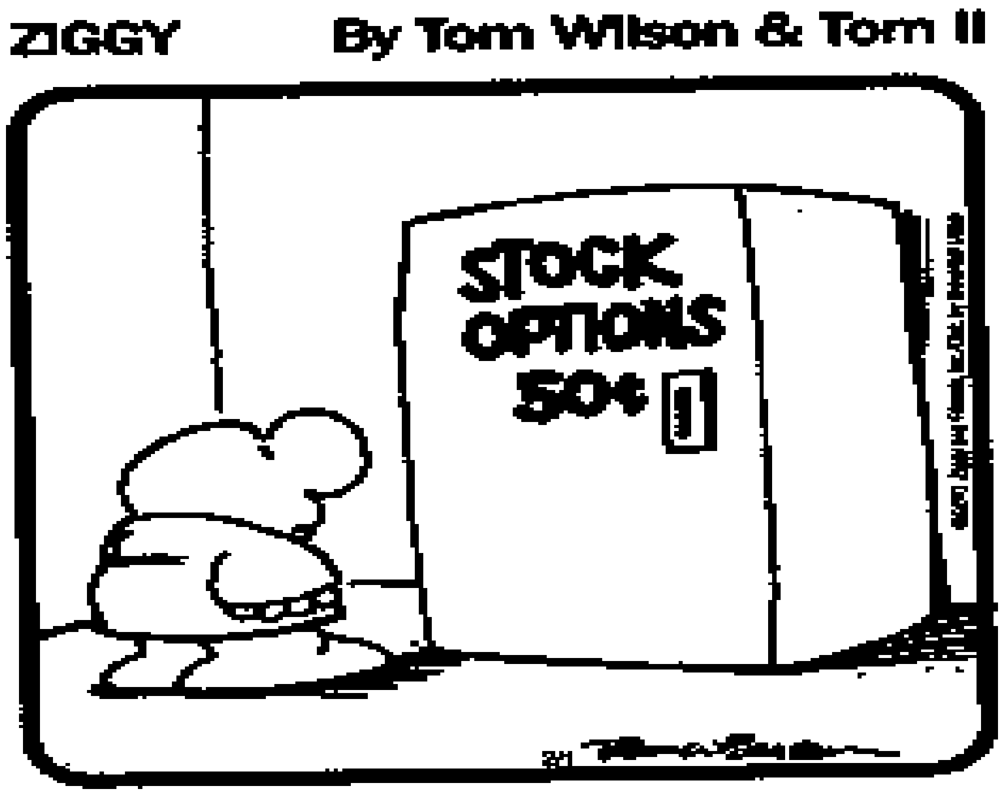
Hardship Distributions

Action Item:

- If Plan is amended to eliminate 6 month delay, when resuming elective deferrals:
  - If Plan uses auto enrollment/auto escalation, will elective deferrals resume at rate in effect pre-suspension or at auto-increased rate?
  - Can TPA administer resumption without new election?

Executive Compensation



Executive Compensation

- Several changes affect executive compensation – check with legal counsel if company has:
  - Employees earning over $1M
  - Performance-based compensation
  - Severance payments over $1M from non-profit
  - Stock options or restricted stock awards

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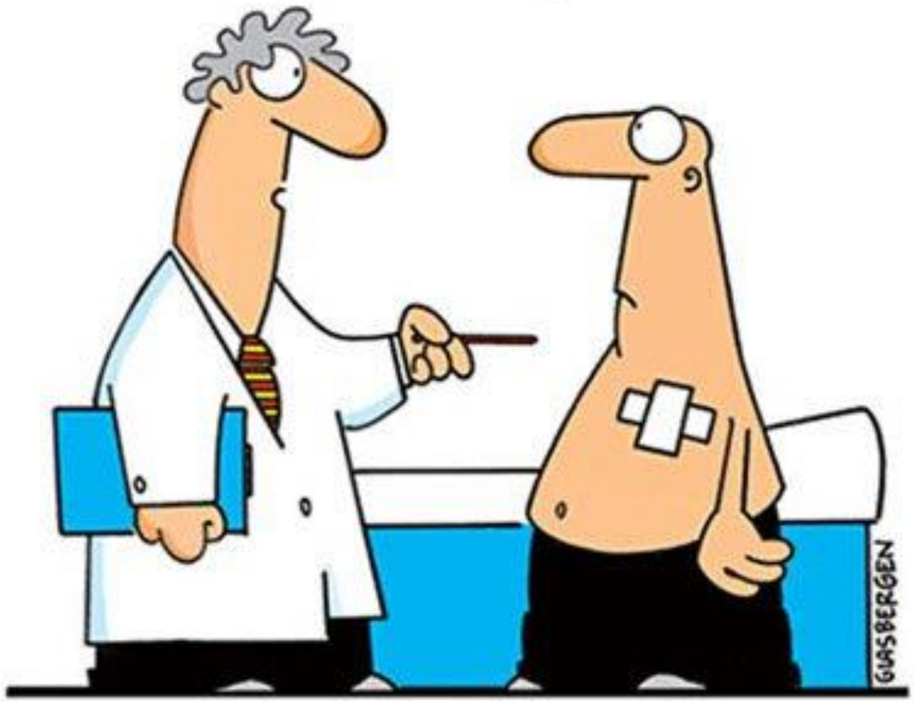
Other Provisions



"It's a pacemaker for your heart.
Plus, you can download apps for your liver,
kidneys, lungs, and pancreas!"

Other Provisions

New provisions – Tax Credit for Paid FMLA Leave:

- New tax credit for between 12.5% and 25% of wages paid by employer in 2018 and 2019 to employee on FMLA (versus prior deduction)
  - Must provide at least two weeks of annual paid FMLA leave with at least 50% wage replacement under written policy
  - Employee must be employed by employer at least one year, and cannot have prior year compensation in excess of 60% of Highly Compensated Employee limit [60% of $120,000 in 2018]
  - Not vacation pay, personal leave pay, other medical or sick leave pay, or state- or local-government mandated paid leave

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Other Provisions

"If elected, I will lower my taxes. Hey, it's a start!"

Other Provisions

New provisions – Lower Tax Rates:

- New lower individual tax rates make Roth contributions more favorable
- S-Corporation, Partnerships, and LLCs taxed as partnerships may get a tax deduction for some owners' contributions, so extra benefit from paying tax (Roth contributions)

Other Benefit Provisions

New provisions:

- Employer-paid moving expenses are no longer excludible from employee's income

Action:

- Consider whether to amend definition of compensation under retirement plan to exclude moving expenses

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Other Benefit Provisions

New provisions:

- Employer-provided qualified transportation benefits and bicycle commuting expenses are no longer deductible by the employer, although still tax exempt benefits for the employee

- For non-profit employers, these costs will be taxable as unrelated business taxable income

Other Benefit Provisions

New provisions:

- Starting in 2019 – The Affordable Care Act individual mandate penalty is reduced to $0
- Some states have adopted state-level individual mandate penalties
  - New Jersey, starts January 1, 2019
  - Vermont, starts January 1, 2020

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Other Benefit Provisions

New provisions:

- Deductible/excludible employer-provided length of service and employee achievement awards cannot be: cash, gift coupons, general gift certificates, vacations, meals, lodging, tickets to sporting or theater events, securities, or similar items

- Can be a gift certificate to select specific item of tangible personal property

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Other Benefit Provisions

Background:

- The IRS scaled back the favorable Determination Letter program for individually-designed qualified retirement plans and expanded its programs providing favorable Opinion Letters for preapproved volume submitter and prototype plans

Other Benefit Provisions

New Provisions:

- The IRS is considering whether to expand the Determination Letter program to situations other than a new plan adoption or a plan termination

Action:

- In the meantime, obtain an opinion letter on plan's continued tax exempt status from legal counsel as work-around (e.g., for corporate acquisition, audit representations, etc.)

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Questions?

Nancy Keppelman
keppelman@butzel.com
Direct: (734) 213-3433

Lynn McGuire
mcguire@Butzel.com
Direct: (734) 213-3261

BUTZEL LONG, a professional corporation

www.butzel.com

Michigan | New York | Washington, D.C.

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