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Tax and Employee Benefits Policy Under the Trump Administration

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Tax and Employee Benefits Policy Under the Trump Administration

What Employers Should Know

With any new presidential Administration comes new developments for employers to monitor on a wide variety of topics, and tax and employee benefits policy is no exception. The Trump Administration has been reviewing key components of ERISA, the Affordable Care Act and the Internal Revenue Code, and has already implemented regulatory changes that employers need to consider in maintaining an employee benefits program for their workforce.

The following summary addresses some of the Administration's key efforts at changing policy in this complex and technical area:

Affordable Care Act

While legislative changes have proven to be very difficult to get through this Congress, new regulatory guidance is already having an impact on the Affordable Care Act ("ACA"). The structure of the ACA allows for many of its provisions to be implemented by regulation. With a change in Administrations, new priorities are pursued by administrative agencies, and different interpretations of statutory text can lead to drastically different results.

Here are a few of the significant recent regulatory developments:

- *Proposal for Association Plans*: Last week, the Administration issued an executive order [LINK: https://www.whitehouse.gov/the-press-office/2017/10/12/presidential-executive-order-promoting-healthcare-choice-and-competition] that instructed the Department of Labor to propose regulations that would allow smaller employers to band together in offering group health coverage to their employees. The proposals are expected to modify the "commonality of interest" requirement that currently applies to plans covering employees of multiple unrelated employers. This change would make it easier for unaffiliated entities to offer coverage under a single plan, thereby taking advantage of a larger group rating and potential cost savings. These association plans may also be permitted to provide insurance across state lines, potentially further limiting the cost of coverage.

- *Expansion of HRAs*: The executive order also proposed an expansion of Health Reimbursement Arrangements (HRAs). Such an expansion would allow employers greater flexibility in establishing and funding the accounts that could be used to pay for medical expenses on a tax-free basis. The use of HRAs had previously been limited by the Obama Administration in an effort to prevent employers from offering HRAs to employees who obtain coverage on the individual market.
- *Contraception Mandate*: For employers with a religious or moral objection to providing contraception services under their medical plans, new final regulations [LINK: https://www.gpo.gov/fdsys/pkg/FR-2017-10-13/pdf/2017-21852.pdf] issued last month by the Trump Administration provide an exemption to the requirement that such services be covered without cost sharing. Employers need only to self-certify that they object to providing the coverage and their plans would be exempt. This exemption applies even to private employers who are not affiliated with a religious organization.
- *Employer Mandate*: Each legislative proposal from the Trump Administration has attempted to limit or eliminate the employer mandate, which requires large employers to offer coverage to all full-time employees. Regulatory actions from both the Obama and Trump Administrations have limited the employer mandate's scope. For now, the employer mandate has been maintained, but we expect continued efforts to chip away at its effectiveness.

Proposals to Change the Tax Code

Proposals for comprehensive tax reform could impact employee benefits programs as well. Legislative efforts promise a reduction in tax rates for all wage earners, potentially changing the need for deferred compensation programs.

Further, while current proposals keep many of the existing tax benefits for qualified plans (such as 401(k) or profit sharing plans) those tax benefits may be modified or limited as the legislation works its way through Congress. Comprehensive tax reform legislation may also take aim at the exclusion from income for employer-provided health insurance, a tax subsidy that costs the Treasury $236 billion per year. Elimination of that tax subsidy would raise significant tax revenue while creating greater transparency to employees as to the cost of coverage.

Employers and plan sponsors should regularly review the compliance of their plan documents and the administration of their benefit programs while keeping an eye on potential changes coming out of Washington. Please contact your regular Hinshaw attorney if you have any questions about these developments.

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