

THE WASHINGTON OUTLOOK FOR HR PUBLIC POLICY

2017 Tax Reform

- President Donald Trump signed tax reform legislation, [Public Law No: 115-97](#), on December 22, 2017.
- Wins for HR include:
 - Preservation of Employer-Provided Education Assistance (IRC Section 127)
 - Preservation of Qualified Tuition Reduction Programs (IRC Section 117)
 - Preservation of Dependent Care Flexible Spending Accounts (IRC Section 129)
 - Preservation of Adoption Benefits
 - Preservation of the Work Opportunity Tax Credit
 - Preservation of Medical Savings Accounts (MSAs)
 - Preservation of Catch-Up Provisions for High Earners



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- **Preservation of Employer-Provided Education Assistance (IRC Section 127):** Allows employees to exclude from income up to \$5,250 of education assistance provided by their employer, at the undergraduate, graduate or certificate level, per year.
- **Preservation of Qualified Tuition Reduction Programs (IRC Section 117):** Allows institutions of education to provide their employees, spouses and children educational assistance tax-free.
- **Preservation of Dependent Care Flexible Spending Accounts (IRC Section 129):** Allows employees to contribute up to \$5,000 per calendar year tax-free into an account utilized for child care spending.
- **Preservation of Adoption Benefits:** Allows employees to exclude from income adoption assistance provided by their employer up to \$13,500 (indexed for inflation).
- **Preservation of the Work Opportunity Tax Credit:** Provides employers with a 40 percent tax credit for hiring individuals in certain targeted groups.
- **Preservation of Medical Savings Accounts (MSAs):** Allows certain individuals to contribute to an MSA, which is a tax-exempt trust or custodial account.
- **Preservation of Catch-Up Provisions for High Earners:** Allows individuals making more than \$500,000 annually to make catch-up provisions to 401(k), 403(b) and

457 plans.

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Tax Reform Changes Impacting HR: (effective December 31, 2017)

- **Commuting (Transit) Benefits** – No longer a deductible business expense for employers. Employees may continue to exclude the benefit from taxable income. (2018 limit \$260/month)
- **Biking Benefit** – No longer a deductible business expense for employers. Benefit now included in taxable income for the employee. (2018 limit \$20/month)
- **Moving Expenses** – No longer a deductible business expense for employers. Employees cannot deduct moving expenses *and* any stipend provided by employers will be included as taxable income.
- **Other Fringe Benefits** – Other benefits such as employer-provided meals and onsite gyms are no longer a deductible business expense for employers. Employees may continue to exclude the benefit from taxable income.
- **Employee Achievement Awards** - No longer a deductible business expense for employers. Benefit now included in taxable income for the employees. This includes cash, cash equivalents, gift cards, gift certificates, vacations, meals, lodging or tickets to theater or sporting events.
- **Family and Medical Leave Act (FMLA) Credit for Employers** - Provides an employer a credit of 12.5 – 25 percent of the wages paid to a qualified employee utilizing FMLA.



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Commuting Benefits: Under [current IRS limits](#), in 2017 employee transit benefit programs can allow employees to use pretax dollars and employers to deduct their contributions of:

\$255 per employee per month in transportation expenses / \$255 per employee per month in parking expenses/ \$20 per employee per month for biking-related expenses.

For 2018, the tax-excludable limit for both transportation and parking expenses will be \$260 per month, while the exclusion for biking expenses would stay at \$20, the [IRS announced](#) in October 2017.

The tax bill eliminates the business deduction for [qualified mass transit and parking benefits](#), except as necessary for ensuring the safety of an employee, beginning in 2018. Mass-transit and parking benefits, however, will continue to be tax exempt to employees, who can pay their own mass transit or workplace parking costs using pretax income, through an employer-sponsored salary-deduction program. Tax-exempt employers aren't spared; they will be subject to the tax on unrelated business income for any qualified transportation benefits provided to employees. The biking benefit is treated a bit differently. The legislation suspends the exclusion from gross income and wages for qualified bicycle commuting reimbursements for taxable years beginning

after Dec. 31, 2017 and before Jan. 1, 2026. This means that employer reimbursements for bicycle commuting expenses are taxable and subject to payroll taxes and income tax withholding.

Achievement Awards: Creates a new category related to employee achievement awards entitled “tangible personal property.” Employees would not be able to exclude from taxable income and employers cannot qualify as a business expense, cash, cash equivalents, gift cards, gift certificates, vacations, meals, lodging or tickets to theater or sporting events. Effective for tax years beginning after December 31, 2017.

Individual Mandate Penalty Repealed: I didn’t include this on the slide, but I think you should mention it verbally. The tax bill did not remove the mandate, instead it reduced the penalty to zero – rendering it unenforceable. While this is not a direct impact on employers, this does de-stabilize the insurance marketplace and will likely cause increases in insurance premiums as healthy participants will now opt-out of coverage.

2018 Policy Priorities:

**Expansion of
Employer-Provided
Education Assistance
Benefits
(Section 127)**

- **Employer Participation in Student Loan Assistance Act (HR 795)**
 - Bipartisan legislation introduced by Representatives Rodney Davis (R-IL), Jared Polis (D-CO), Scott Peters (D-CA) and Elise Stefanik (R-NY).
 - Expands Section 127 of the Internal Revenue Code to include student loan repayment.
- **Expansion of Section 127 Limit (S.2007/H.R. 4135)**
 - Bipartisan bill introduced in Oct. by Senators Jeff Flake (R-AZ) and Catherine Cortez-Masto (D-NV) and Reps. Jason Smith (R-MO), Rodney Davis (R-IL), Henry Cuellar (D-TX) & Danny Davis (D-IL).
 - Will expand Section 127 of the IRC to \$11,500 per calendar year, and index that amount for inflation.

As Chair of Coalition to Preserve Employer-Provided Educational Assistance, SHRM supports both of these bills.



Chairman Brady of the Ways and Means Committee is supportive of expansion of Section 127 for student loan repayment.

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2017-2018 Public Policy Agenda Labor and Employment

- President Trump created a new “2 for 1” Rule:
 - Creates a Regulatory Reform Office in each agency
 - Focus on regulations that eliminate/inhibit jobs, outdated or costs exceed benefits
- Aggressive regulatory and executive action on Obama-era rules:
 - Final Persuader Rule Rescinded
 - Administrative Interpretations on Joint Employment and Independent Contractor Rescinded
- NLRB Board remains a 2-2 tie of Democrats and Republicans. Recent Board action will be reviewed:
 - Marvin Kaplan, confirmed, named Chair
 - William Emanuel, confirmed
 - Board Chair Phillip Miscimarra retired in December
 - December flurry of activity = cases overturned on joint employment, micro-unions, and neutral handbooks should receive more latitude
 - RFI on 2015 “ambush” election rule due 2/28/18



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- July 26, 2017 DOL issued 60-day comment period on RFI on overtime rule.
- August 31, 2017 Texas Court struck down final Obama Administration overtime rule.
- October 2018, target date for NPRM on overtime rule.
- Janet Dhillon (Chair) and Daniel Gade nominated to EEOC Commission and still pending confirmation. Once confirmed, EEOC will review:
 - Final Guidance on Sex Discrimination
 - Final Wellness Rules under ADA and GINA by Aug. 2018
 - EEOC Best Practices on Harassment and draft guidance
 - Stayed EEO-1 Compensation Data Collection Rule will be reviewed