abd Insurance & Financial Services

Office Hours

2017 Year in Review:
Plus What Lies Ahead in 2018!

Audio

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ICYMI: Recent Office Hours Library

http://www.theabdteam.com/abd-insights/presentations/

Health Benefits While on Leave:
The Rules All Employers Need to Know

- Understand how protected leave rules under FMLA/CFRA/PDL affect employee benefits
- Plus non-protected leave, ACA, ADA, COBRA, and other leave issues you need to know

The San Francisco Paid Parental Leave Ordinance:
Complying with the City's New 2017 Paid Leave Law

- As of 2017, San Francisco is the first city to require employer-paid parental leave
- Supplements the amount available through California PFL for new child bonding

Health Benefits for Domestic Partners:
Review of the Tax and Coverage Rules for Employers

- Domestic partners may be same-sex, opposite-sex, registered, or company-defined
- Coverage, tax, and other compliance issues at the federal, state, and local levels

The American Health Care Act:
Details on the ACA Repeal and Replace Bill

- The AHCA passed the House on May 4, 2017 (similar bill currently stalled in the Senate)
- Review of the Top 10 changes in the AHCA that would affect employer plans

Agenda

ACA

- **Repeal and Replace?**
  - Trump Executive Order
  - American Health Care Act
  - Better Care Reconciliation Act
  - Graham Cassidy
  - ABD Commentary
- **ACA Marches On**
  - ALE Status, Employer Mandate Pay or Play
  - 2018 Increased Pay or Play Penalties
  - 2018 Decreased Affordability Safe Harbors
  - 2015 Pay or Play Penalty Letters Arrive
  - 2017 ACA Reporting Deadline Extended
  - 2020 Cadillac Tax Still Looms (Delayed!)
  - Insured Nondiscrim Rules Indefinite Delay
  - Executive Order re Association Health Plans
  - Executive Order re Stand-Alone HRAs

Non-ACA

- **Tax Cuts and Jobs Act**
  - Individual Mandate Effectively Repealed 2019
  - Tax Credit for Paid Family and Medical Leave
  - 401(k) Loan Repayment Period Extended
  - Medical Expense Deduction Improved
  - Tax-Free Bicycle Expense Eliminated
  - Tax-Free Moving Expense Eliminated
  - Tax-Free Cash Achievement Awards Eliminated
  - Employer Commuter Deduction Eliminated
- **California Leave Law Updates**
  - SDI/PFL Increased Benefits for 2018
  - New Parent Leave Act Effective 2018
- **San Francisco Ordinance Updates**
  - SF PPLO Effective Down to 20 EEs in 2018
  - 2018 SF HCSO Health Care Expenditure Rates
  - New Employee Voluntary Waiver Form/Rules

ACA Repeal and Replace
Ride the Rollercoaster

ACA Repeal and Replace:
Trump Executive Order

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/compliance-alert-first-step-trump-signs-aca-executive-order

First Step: Trump Signs ACA Executive Order Day 1

- One of President Trump's first pen strokes upon taking office was to sign an executive order related to the ACA
- Directs all executive agencies within the new Trump administration (including the three key players with respect to ACA: The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury) to **"minimize the unwarranted economic and regulatory burdens of the [ACA]."**
- Directs the Departments to **"exercise all authority and discretion available to them to waive, defer, grant exemption from, or delay the implementation of any provision or requirement of the [ACA] that would impose…a cost, fee, tax, penalty, or regulatory burden"** on essentially any individual or other entity that could be affected by the ACA.

Practical Effect

- Employers should view the executive order as primarily symbolic
- The ACA's provisions that affect employers are almost all fully effective and implemented with final regulations at this point.
- **There is little that any executive action could do to immediately provide relief to employers with respect to the key features of the ACA that create potential liability—including the employer mandate pay or play rules and the ACA reporting requirements**

ACA Repeal and Replace:
American Health Care Act

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-american-health-care-act-passes-house

Full Webinar: http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--AHCA%20Passes%20House%205.25.17_0.pdf

American Health Care Act Passes House in May

- After an incredibly turbulent bout of fits and starts, the AHCA finally passed the House on May 4, far later than initially expected
- Speaker Ryan pulled the bill from the floor before scheduled March 24 vote when conservative Freedom Caucus members blocked passage
- MacArthur Amendment and Upton Amendment negotiated to appease both factions with complex provisions relating to states' ability to opt-out of key ACA provisions

Major Changes

- Employer mandate pay or play rules repealed (technically zeroed out penalties)
- Individual mandate repealed (technically zeroed out penalties)
- HSA limits doubled (to over $13,000 for family HDHP coverage), and other tweaks
- Cadillac tax delayed to 2026 (expected to never take effect)
- ACA reporting moved to simple Form W-2 reporting of months eligible for coverage
- Over-the-counter medicines and drugs no longer require a physician prescription to be reimbursed by a health FSA, HRA, or HSA
- $2,500 (currently $2,650) health FSA salary contribution limit eliminated

ACA Repeal and Replace:
Better Care Reconciliation Act

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-senate-aca-repeal-and-replace-bill-fails

Senate Fails to Pass ACA Repeal/Replace

- No viable route to appease moderates and conservatives in the Senate
- The last-second MacArthur Amendment-type compromise never came
- Byrd Rule limitations on reconciliation process to avoid filibuster created impossible balancing act that ultimately collapsed
- Initial response effort to move to full repeal with two-year transition also failed, despite passing in 2015 during Obama administration (vetoed by President Obama)
- Also failed to pass “skinny bill” when Sen. McCain returned to dramatically cast deciding “no” vote to everyone’s surprise

Graham-Cassidy Last Ditch Effort (Surprisingly) Almost Worked

- Senate made last ditch effort at end of reconciliation process to pass very different Graham-Cassidy bill by end of September
- Bill focused on state block grants to provide more flexibility for states to address health care reform efforts
- Came close to receiving enough support despite lingering quietly for most of the year, but ultimately came up just short when three Senators announced they could not support the bill
- The September 30 deadline therefore came and went in anticlimactic fashion with a de facto defeat of the repeal efforts until 2018

ACA Repeal and Replace: ABD Commentary

Health Care Reform, Round 3: Third Time's the Charm

- http://www.theabdteam.com/abd-insights/newsletter/abd-commentary-health-care-reform-round-3-third-time's-charm
- Proposal for bipartisan route to health care reform
- Focuses on employer-sponsored coverage as consensus-builder
- Combination of Cadillac tax repeal, employer mandate pay or play repeal, and ACA reporting repeal, paired with numerous proposed child care reforms (championed primarily by Ivanka Trump)
- Should be sufficient bipartisan support for the package to avoid reconciliation complexities

HSAs to Lead the Way After ACA

- http://www.theabdteam.com/abd-insights/newsletter/abd-commentary-hsas-lead-way-after-aca
- An in-depth look at the radical HSA revolution that may be at head in the near future
- Doubling the HSA contribution limit will put intense new emphasis on the value of HSAs as a triple-tax-advantaged investment vehicle
- The ability to use HSAs to pay for premiums unlocks the potential for major individual market advancement
- Employer opt-out credit structures could lead to many employees seeking individual market coverage with large employer HSA contributions as an alternative to group coverage

HSA FTW?

ACA Marches On
What’s the Latest?

Employer Mandate "Pay or Play" Applicable Large Employer Status

An employer is an applicable large employer (ALE) in the current year if it employed (along with all members of its controlled group) an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year. For purposes of determining whether an employer is an ALE, the employer must convert part-time employees into full-time equivalents. (Note: Special rules apply for seasonal workers and certain veterans.)

ALE CALCULATION

- **Step 1:** Calculate the number of full-time employees for each calendar month in the preceding calendar year. For purposes of this calculation only, full-time employee means those who worked at least 120 hours of service in a month. (Note that for all other purposes under the pay or play rules, full-time is 130 hours of service per month.)
- **Step 2:** Calculate the number of full-time equivalents for each calendar month in the preceding calendar year as follows:
  - *Step A:* Calculate the aggregate hours of service in a month for employees who are not full-time employees for that month (i.e., did not work at least 120 hours of service in that month).
  - *Step B:* Divide the total hours of service from Step A by 120. The result is the number of full-time equivalent employees for the month.
- **Step 3:** Add the number of full-time employees and full-time equivalents obtained in Steps 1 and 2 for each month of the preceding calendar year.
- **Step 4:** Add up the 12 monthly numbers from Step 3 and divide the sum by 12. This is the average number of full-time employees (including full-time equivalents) for the preceding calendar year.
- **Step 5:** If the number obtained in Step 4 is less than 50, then the employer is not an ALE for the current calendar year. If the number obtained in Step 4 is 50 or more, the employer is an ALE for the current calendar year.

EXAMPLES

- **Example 1:** Employer's controlled group averaged 43 full-time employees (including full-time equivalents) in 2017.
- **Result 1:** Employer is not an ALE in 2018.
- **What Does Result 1 Mean?:**
  - Employer is not subject to pay or play (no potential §4980H penalties) in 2018
  - Employer is not subject to ACA reporting (§6055/ §6056 via Forms 1094-C and 1095-C) for the 2018 calendar year that is reported at the beginning of 2019. (Note: §6055 reporting via Forms 1094-B and 1095-B will apply if the employer offered a self-insured medical plan.)
- **Example 2:** Employer's controlled group averaged 55 full-time employees (including full-time equivalents) in 2017.
- **Result 2:** Employer is an ALE in 2018.
- **What Does Result 2 Mean?:**
  - Employer is subject to potential pay or play penalties (under §4980H) in 2018
  - Employer is subject to ACA reporting (§6055/ §6056 via Forms 1094-C and 1095-C) for the 2018 calendar year that is reported at the beginning of 2019.

The ACA's Employer Mandate "Pay or Play" §4980H Penalties

§4980H(a)—The "A Penalty"
Aka: The "Sledge Hammer Penalty"

- **Failure to offer MEC to at least 95% of all full-time employees (and their children to age 26) in 2016 and beyond**
- The A Penalty is triggered by at least one such full-time employee who is not offered MEC enrolling in subsidized exchange coverage
- 2018 A Penalty liability is $2,320 annualized ($193.33/month) multiplied by all full-time employees
  - 30 full-time employee reduction from multiplier in 2016 and beyond

§4980H(b)—The "B Penalty"
Aka: The "Tack Hammer Penalty"

- Applies where the employer is not subject to the A penalty
- **Failure to:**
- **1) Offer coverage that's affordable**
- **2) Offer coverage that provides MV**
- **3) Offer MEC to a full-time employee (where the employer has still offered at a sufficient percentage to avoid A Penalty liability)**
- The B Penalty is triggered by any such full-time employee enrolling in subsidized exchange coverage
- 2018 B Penalty liability is $3,480 annualized ($290/month) multiplied by each such full-time employee who enrolls in subsidized exchange coverage
  - Note that although the B Penalty amount is higher ($3,480 vs. $2,320), the multiplier is generally much lower
  - The multiplier is only those full-time employees not offered affordable/minimum value coverage who enroll in subsidized exchange coverage—not all full-time employees

Affordability Safe Harbors

The IRS has now confirmed that the pay or play affordability safe harbors are indexed to inflation in the same manner as affordability is determined on the exchange. For 2018, the applicable percentage decreases to 9.56% (down from 9.69% in 2017).

- **2018 Federal Poverty Line Safe Harbor:** 9.56% of the Federal Poverty Line

  2018 Federal Poverty Line (Continental U.S.): $12,060

  2018 Monthly Employee-Share of Premium for Lowest-Cost Plan Limit: $96.08

- **2018 Rate of Pay Safe Harbor:** 9.56% of Rate of Pay

  Hourly Employees: 9.56% of Employee's Hourly Rate of Pay x 130

  Salaried Employees: 9.56% of Employee's Monthly Salary

- **2018 Form W-2 Safe Harbor (Not Recommended):** 9.56% of Box 1 Wages

  Form W-2 safe harbor provides no predictability because Box 1 unknown until January of following year

  Box 1 does not include many forms of compensation, including 401(k) deferrals and Section 125 salary reductions for health and welfare plan coverage

  May work if employer sets employee contribution amount at a fixed percentage of income—but most employers aren't interested in this approach

ACA Employer Mandate Pay or Play: 2015 Penalties Finally Arrive in Mail

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-aca-pay-or-play-penalty-letters-coming"late-2017"

IRS Letter 226J

- Applicable Large Employers (ALEs) informed late 2017 of potential penalties
- So far, the IRS appears to be focusing on A Penalty "Sledge Hammer" enforcement
- Looks back to 2015—the first year pay or play rules were in effect
- Numerous transition rules applied that year—make sure you take advantage!
- Special rules for 50-100 employees, reduced A Penalty threshold, reduced A penalty calculation, non-calendar year plans, etc.
- Review full alert for details on how to respond to Letter 226J

Dear

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP $ [XXXXXX]

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

ACA Reporting:
2017 Deadlines Extended (Yet Again)

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-2017-aca-reporting-deadline-extended-30-days

Identical 30-Day Extension from 2016

- 30-day extension applies only to the deadline for providing forms to individuals
- Deadlines to file with the IRS remain standard
- Also extends the good faith enforcement safe harbor to 2017 filings to avoid penalties for incorrect or incomplete information (generally $260 per return)
- REMEMBER: Must provide and file timely to utilize the good faith enforcement safe harbor

2018 ACA Reporting Deadlines:

- **Forms 1095-B and 1095-C:**
- Deadline to Furnish to Individuals

  Standard Due Date: January 31, 2018

  Extended Due Date: March 2, 2018

- **Forms 1094-B and 1094-C (+Copies of Forms 1095-B/1095-C):**
  Deadline to File with IRS by Paper

  Standard Due Date: February 28, 2018

- **Forms 1094-B and 1094-C (+Copies of Forms 1095-B/1095-C):**
  Deadline to File with IRS Electronically (Required for 250 or More Returns)

  Standard Due Date: April 2, 2018 (March 31, 2018 falls on a Saturday)

The ACA:
The Cadillac Tax Still Looms

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/compliance-alert-president-obama-signs-two-year-cadillac-tax-delay-law

Full Webinar: http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--Cadillac%20Tax%20final%20with%20audio.pdf

On December 18, 2015, President Obama signed a massive omnibus bill (the Consolidated Appropriations Act, 2016) into law that included a Cadillac tax delay

Three key changes to the Cadillac tax:

1) **Two-Year Delayed Effective Date:** The tax is now scheduled to take effect in 2020
2) Deductibility of the Excise Tax: The 40% excise tax is now deductible for employers
3) Potential Revisions to Age and Gender Adjustment: Congress will study and hear reports on different benchmark (other than Federal Employees Health Benefit Plan)

- Most members of Congress remain steadfastly against the Cadillac tax
- Will the Cadillac tax survive to ever take effect in 2020 or beyond? Seems unlikely
- **UPDATE: DELAYED TO 2022 IN 1/22/18 BUDGET DEAL**
- Omnibus bill also included a moratorium on the ACA health insurer tax for 2017
  - This is a tax on premiums for fully insured health policies imposed by the ACA
  - Moratorium applied only to the 2017 calendar year
  - UPDATE: MORATORIUM FOR 2019 IN 1/22/18 BUDGET DEAL

The ACA: Fully Insured Plan
Nondiscrimination Rules Still Pending

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/compliance-alert-what%E2%80%99s-left-after-aca-auto-enrollment-repealed

The ACA provides that insured group health plans will be subject to rules "similar to" the nondiscrimination requirements that have long applied to self-insured plans under Internal Revenue Code §105(h)

- These rules technically were scheduled to apply at the same time as the first wave of market reforms (first plan year on or after September 23, 2010)
- However, the IRS issued Notice 2011-1 at the end of 2010 confirming that employers are not required to comply until the Departments issue regulations or other administrative guidance to implement the rules

The Notice states that any such guidance will not apply until plan years beginning a specified period after issuance

- For example, they may not apply until the first plan year beginning on or after six months following the regulatory issue date
- Indications are that these rules are not a high priority and are not likely to be imminently issued
- One of the few employer-side ACA items that may actually be affected by Trump EO

The ACA:
Executive Order 13813 (10/12/17)

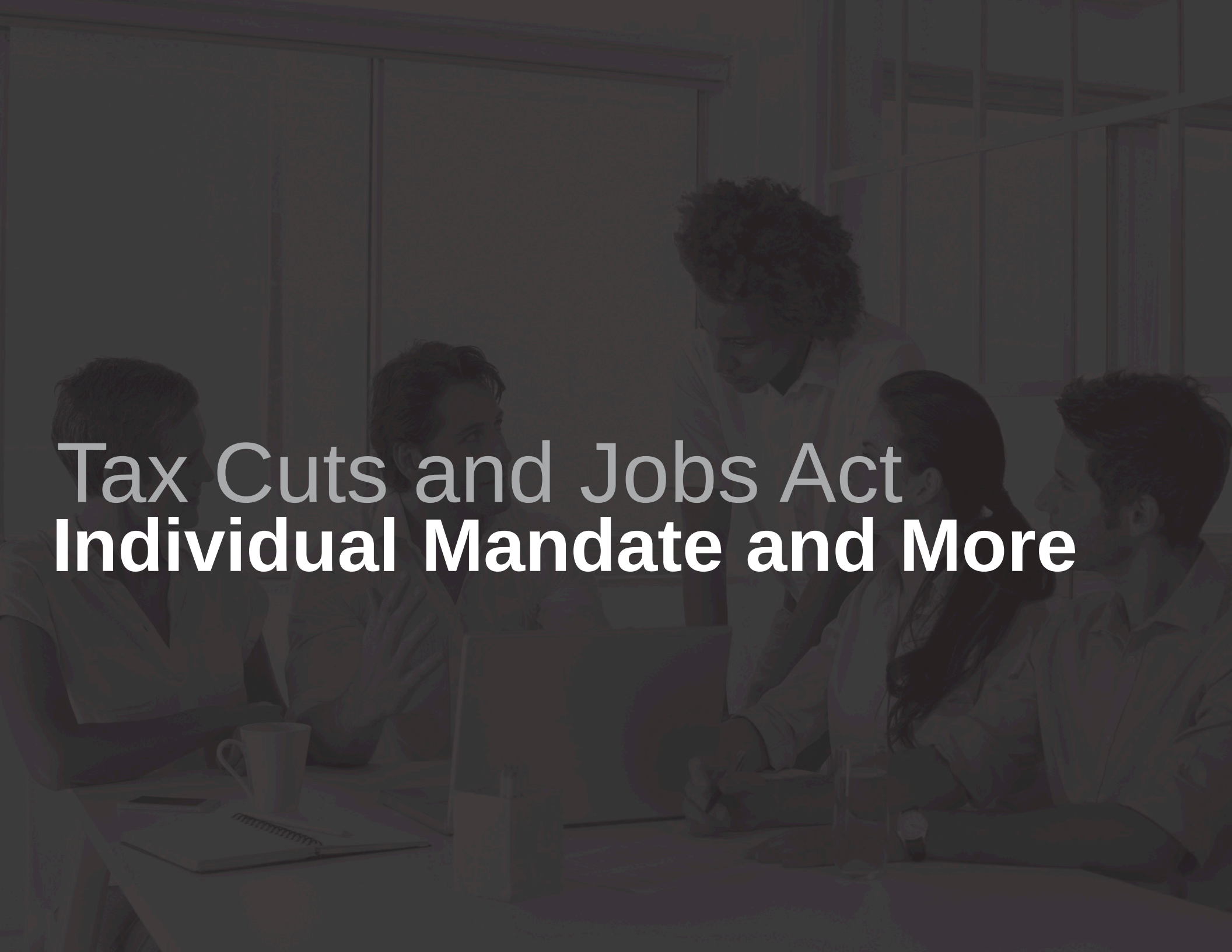
Full Order: https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-healthcare-choice-competition-across-united-states/

Association Health Plans (AHPs)

- Order requires DOL to issue regulations within 60 days to ease MEWA rules to permit AHPs that avoid small group rating with lower hurdles
- Proposed regulations issued January 5, 2018
- Purpose of the rule is to make it easier for the AHP to be treated as the "employer" under ERISA, and therefore exempt participating employers from small group rating
- Must be a "bona fide group or association of employers" to qualify for employer status
- Proposal permits association to be formed solely for the purpose of creating a health plan
- Also permits association to be based only on a geographical region

Stand-Alone HRAs

- Order requires IRS/DOL/HHS to issue regulations or revise guidance within 120 days to expand employer ability to offer HRAs for individual policy payment
- IRS has issued a long line of guidance (starting with the "Friday the 13th" guidance in September of 2013) addressing ACA prohibition of individual policy reimbursement
- Triggers $100/day/employee excise taxes under IRC §4980D as impermissible health plan
- HRAs must satisfy complex integration rules that essentially require access to an employer-sponsored major medical plan that provides minimum value to comply
- New proposal may make it much simpler HRAs to reimburse individual policy premiums



Tax Cuts and Jobs Act
Individual Mandate and More

Tax Cuts and Jobs Act:
Individual Mandate Tax Penalty

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-final-tax-cuts-and-jobs-act-bill-passes-congress

Eliminates the Individual Mandate Tax Penalty

- Effective January 1, 2019
- Reconciliation rules prevent full repeal, but zeroing out all penalties is the functional equivalent for all practical purposes
- No more tax penalty for failure to maintain minimum essential coverage (MEC)
- Employees may choose to go uninsured without tax consequences
- Likely to eliminate Part III of Form 1095-C for self-insured plans eventually

The Individual Mandate Tax Penalty: ACA after the TCJA

	ACA: 2018	TJCA: 2019
Percentage Amount	2.5% of Income Above Filing Threshold	0% of Income Above Filing Threshold
Flat Dollar Amount	$695/Adult $347.50/Child $2,085 Family Max	$0/Adult $0/Child $0 Family Max

Tax Cuts and Jobs Act:
Tax Credit for Paid Family Leave

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-final-tax-cuts-and-jobs-act-bill-passes-congress

Tax Credit for Paid Family Leave *(Effective 2018)*

- The TCJA adds a new employer tax credit for providing paid family and medical leave to employees that is equal to a percentage of wages paid (ranging from 12.5% to 25%)

Eligible employers must:

1) Have a written policy to provide paid family and medical leave to qualifying full-time employees for at least two weeks annually or a proportional amount for qualifying part-time employees (based on a ratio of hours worked vs. equivalent qualifying full-time employees); and
2) Pay qualifying employees at least 50% of their normal wages

Qualifying employees must:

1) Be employed by the employer for at least one year; and
2) Have compensation no greater than 60% of the §414(q)(1)(B) HCE limit in the prior year (currently $120,000)—which means the 2018 limit on 2017 compensation is $72,000

Qualifying family and medical leave includes the permitted reasons for leave under FMLA:

1) Childbirth and to care for the new child (baby bonding)
2) Placement of a child with the employee for adoption or foster care
3) To care for a spouse, child, or parent of the employee with a serious health condition
4) The employee's serious health condition that makes the employee unable to perform normal duties
5) Other qualifying exigencies set forth in FMLA

Tax Cuts and Jobs Act:
Tax Credit for Paid Family Leave

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-final-tax-cuts-and-jobs-act-bill-passes-congress

Tax Credit for Paid Family Leave *(Effective 2018)*

- Maximum duration of the tax credit: 12 weeks per year
- Vacation pay, sick pay, and personal leave pay do not qualify for the credit
- Amounts mandated or paid by state or local governments do not qualify for the credit
  - California SDI/PFL (and other state equivalents) do not qualify
  - It appears payments required by the SF PPLO do not qualify (because mandated by local government)
  - This may put intense pressure on San Francisco to repeal the PPLO (and for other state/localities not to mirror) so employers can receive the tax credit
- Tax credit amount begins at 12.5% of leave payment for pay at 50% of employee's normal pay
  - The credit increases in increments of .25% to a max of 25% for each additional percentage point of pay

Example:

- Peter's regular weekly wages are $1,250, and he made $65,000 last year within the ($72,000 limit)
- Peter has been working for Pawtucket Brewery for over a year and is a full-time employee
- When Peter has his third child Stewie, Pawtucket Brewery pays him during the paternity leave pursuant to a written policy to provide up to six weeks of paid family and medical leave
- If Pawtucket Brewery pays Peter $625 per week (50%), it will receive a $78.12 credit per week (12.5%)
- If Pawtucket Brewery pays Peter $1,250 per week (100%), the credit is $312.50 per week (25%)

Tax Cuts and Jobs Act:
401(k) Loans Upon Termination

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-final-tax-cuts-and-jobs-act-bill-passes-congress

401(k) Loan Repayment Period Extension *(Effective 2018)*

- Under pre-TCJA rules, an employee had just 60 days to repay an outstanding loan balance upon termination from employment (or plan termination)
  - Repayment is technically a rollover of the loan offset amount that occurs from the participant's plan account—the offset amount is rolled over to another employer-sponsored plan or an IRA
  - Created a difficult situation for many participants who were not able to repay the balance of the loan (via the loan offset rollover) within that short 60-day window
  - Failure to rollover the loan offset within 60 days resulted in employees being taxed on the remaining balance (including the 10% early withdrawal penalty if prior to 59 ½)
- TCJA extends the repayment (loan offset rollover) period upon termination of employment or plan termination to the due date for the participant's individual tax return (w/ extensions)
  - This means that participants will have generally until April 15 of the year following the year of the loan offset to make the rollover (repayment), or October 15 if filing for an extension
  - Provides a much longer period for participants to come up with the necessary funds to avoid taxation on the outstanding loan balance upon termination

Example:

- Saul Goodman is an attorney at Hamlin, Hamlin, & McGill who terminates employment in 2018 with an outstanding 401(k) loan balance of $15,000
- He takes a job at Davis & Main, which sponsors a 401(k) that accepts loan offset rollovers
- Saul Goodman has until April 15, 2019 (or October 15, 2019 if filing for an extension) to come up with the $15,000 needed to roll the offset balance into the Davis & Main 401(k) (or an IRA) and avoid taxation on the amount of the loan offset

Tax Cuts and Jobs Act:
The Other Stuff

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-final-tax-cuts-and-jobs-act-bill-passes-congress

Reduced Medical Expense Deduction Threshold *(Effective 2017)*

- Lowers medical expenses deductibility threshold from expenses exceeding 10% of AGI to expenses exceeding 7.5% of AGI (pre-ACA threshold)
  - Applies for only two years, 2017 and 2018, because likely to be addressed again soon in future ACA repeal/replace efforts (previous proposals lowered further)

Tax-Free Bicycle Reimbursement Elimination *(Effective 2018)*

- $20 per month tax-free employer reimbursement provision for certain bicycle commuting expenses (just added in 2009) is now eliminated by the TCJA
  - Elimination sunsets at the end of 2025 (elimination likely to be made permanent by then)

Tax-Free Moving Expense Reimbursement Elimination *(Effective 2018)*

- TCJA eliminates employer-provided tax-free moving expense reimbursement
  - Elimination sunsets at the end of 2025 (elimination likely to be made permanent by then)

Tax-Free Employee Achievement Awards Modified *(Effective 2018)*

- Cash and cash equivalents (*e.g.*, gift cards) can no longer qualify as tax-free employment achievement awards (which are subject many conditions, including a $400-$1,600 limit)

Employer Deductions Eliminated or Reduced *(Effective 2018)*

- Employers are no longer permitted to deduct certain entertainment expenses, the deduction for tax-free on-site meals provided at the convenience of the employer is reduced to 50% (eliminated entirely as of 2026), and employer-provided commuter benefits are no longer deductible

Tax Cuts and Jobs Act:
What Did NOT Make it Into Final Bill

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-final-tax-cuts-and-jobs-act-bill-passes-congress

Dependent Care FSA Elimination as of 2023

- Original House bill would have eliminated the dependent care FSA as of 2018
  - Bill that passed the House would have provided a five-year reprieve until 2023
  - Senate bill preserved the dependent care FSA without modification
  - Final post-conference bill preserved the dependent care FSA without modification
- Ivanka Trump is still lobbying Congress to adopt major child care reforms
  - Child care expense deduction tied to the average cost of child care in the state
  - Dependent care savings accounts that mirror triple-tax advantage approach of HSAs
  - Modifications to the employer on-site daycare tax credit to make it more attractive
  - Federal paid maternity leave funded through FUTA

Adoption Assistance Program Elimination

- House bill would have eliminated the ability for employers to provide tax-free adoption assistance to employees (up to $13,840 in 2018)
  - Senate bill preserved adoption assistance programs without modification
  - Final post-conference bill preserved adoption assistance programs without modification

Qualified Education Assistance Program Elimination

- House bill would have eliminated the ability for employers to provide up to $5,250 in annual tax-free assistance to employees under a qualified program (no work-related requirement)
  - Preserved without modification in Senate and final post-conference bill

2018 Employee Benefit Limits: Inflation Adjustments

Employee Benefit Limit	2018	2017
HSA Individual	$3,450	$3,400
HSA Family	$6,900	$6,750
HSA Catch Up (55+)	$1,000	$1,000
HDHP Maximum Out of Pocket	$6,650 / $13,300	$6,550 / $13,100
HDHP Minimum Deductible	$1,350 / $2,700	$1,300 / $2,600
Health FSA Salary Reduction	$2,650	$2,600
Dependent Care FSA	$5,000 ($2,500 married filing separately)	$5,000 ($2,500 married filing separately)
Highly Compensated Employee	$120,000	$120,000
Mass Transit/Vanpooling	$260/month	$255/month
Qualified Parking	$260/month	$255/month
401(k) Elective Deferral	$18,500	$18,000
401(k) Catch Up (50+)	$6,000	$6,000
FICA Wage Base (SS Only)	$128,400	$127,200

California Leave Laws
2018 Updates in the Most Complicated State

CA SDI/PFL Changes for 2018

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/compliance-alert-california-sdi-and-pfl-benefits-set-increase-january-1-2018

In April 2016, Governor Jerry Brown signed AB 908 into law increasing the benefits paid under SDI and PFL beginning in 2018, and eliminating the PFL waiting period.

Increased Benefits:

60% or 70% (Income Dependent)

Specifics:

- 2017 SDI/PFL benefit was 55% wage replacement for all income levels
- New 2018 approach depends on income level during the base period (prior four quarters):
- **Sixty Percent (60%):** Individuals who earned one-third or more of the state's average quarterly wage
- **Seventy Percent (70%):** Individuals who earned less than one-third of the state's average quarterly wage

Elimination of Waiting Period:

For PFL Only (Not SDI)

Specifics:

- Prior to 2018 there was a seven-day waiting period to receive benefits under both SDI and PFL programs
- The PFL waiting period is waived for new mothers transitioning from SDI to PFL (which remains the same)
- As of 2018, the seven-day waiting period for (non-SDI transition) PFL claims is eliminated
- Seven-day waiting period will remain for SDI claims

California New Parent Leave Act:
Small Employer Parental Leave Job Protection

Effective 2018 and Applies to Employers with 20+ Employees

- PLA applies to employers with 20 to 49 employees within 75 miles
- Fills job protection hole from FMLA/CFRA 50-employee threshold
- Provides job protected leave and health plan continuation rights in same manner as FMLA/CFRA/PDL

Same Approach as FMLA/CFRA, But Limited to Parental Leave

- Employee must have 12 months of service and at least 1,250 hours of service in the 12-month period prior to the leave (FMLA/CFRA equivalent)
- Limited to leave to bond with a child within 12 months of birth, adoption, foster care placement (other FMLA/CFRA leave events don't apply)
- As with CFRA, PLA leave does not run concurrently with PDL leave—so new birthing mothers have a full additional 12 weeks available for baby bonding after PDL leave

Mediation Program

- PLA disputes will be resolved for first two years (2018-2020) through a mediation pilot program to help minimize small employer costs complying with law
- Permits employers to request mediation and bar lawsuits until the mediation is completed

San Francisco Ordinances
2018 Updates in the Most Complicated City

SF Paid Parental Leave Ordinance

Effective Dates: Small 20+ Employers Now Subject to PPLO

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/compliance-alert-full-rundown-new-sf-paid-parental-leave-law

Full Webinar: http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--SF%20PPLO%20Review%20final_0.pdf

Number of Employees Regardless of Location: **(Includes Entire Controlled Group)**

50+ Employees	**January 1, 2017**
35+ Employees	**July 1, 2017**
20+ Employees	**January 1, 2018**

SF PPLO Covered Employees

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/compliance-alert-full-rundown-new-sf-paid-parental-leave-law

Full Webinar: http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--SF%20PPLO%20Review%20final_0.pdf

Any person (including part-time or temp) employed by a Covered Employer who meets all of the following four requirements:

1. **Commenced employment with the Covered Employer at least 180 days prior to the start date of the leave**
   - Re-hires must start over upon gap in employment of one year
2. **Performs at least 8 hours of work per week in San Francisco**
   - Includes work from home!
3. **At least 40% of the employee's total weekly hours for the employer are in San Francisco**
   - Different from SF HCSO!
4. **Eligible for California Paid Family Leave for new child bonding**
   - Note that period of PDL/SDI for birthing mother prior to receiving PFL does not count

PPLO Applies for Parental Leave

Does Not Apply for All Forms of CA PFL

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/compliance-alert-full-rundown-new-sf-paid-parental-leave-law

Full Webinar: http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--SF%20PPLO%20Review%20final_0.pdf

Three Events Where SF PPLO Applies as Qualifying Leave:

A **Birth**

B **Adoption**

C **Foster Care Placement**

San Francisco Health Care Security Ordinance

2018 Health Expenditure Rates

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/2018-health-fsa-limit-projection-new-sf-hcso-amounts-and-revised
Full Webinar: http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--SF%20HCSO%20final2.pdf

The HCSO generally requires employers with 20 or more employees (50 or more for non-profits) to make a minimum level of health care expenditures for employees performing at least eight hours of work per week in San Francisco.

Employer Size	2017 Rate	2018 Rate	172 Hours/Month Maximum
Large: 100+ Employees	$2.64/hour payable	$2.83/hour payable	$486.76/month $1,460.28/quarter
Medium: Business w/ 20-99 Nonprofit w/ 50-99	$1.76/hour payable	$1.89/hour payable	$325.08/month $975.24/quarter
Small: Business w/ 0-19 Nonprofit w/ 0-49	Exempt	Exempt	Exempt

San Francisco HCSO:
The New Voluntary Waiver Form

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-new-sf-hcso-waiver-form-updated-november-1

New form effective November 1, 2017

1) Exact Employee Voluntary Waiver Form must be used. No edits!
2) No pressure or coercion from employer or coworkers. Voluntary!
3) Employee must complete section stating other coverage through spouse, domestic partner, or parent.
4) Waiver is **valid for a period of one year.** Effective date must be on or after signature date, and no later than four months from signature.
5) Employees may revoke waiver at any time and for any reason by submitting written revocation to employer.
6) Employers must provide the employee with a copy of the signed form.

Other forms provided by third-party vendors and health insurance carriers cannot be used in lieu of the City's Employee Voluntary Waiver form.

The HCSO Voluntary Waiver Form

HEALTH CARE SECURITY ORDINANCE EMPLOYEE VOLUNTARY WAIVER FORM

Updated November 1, 2017

ATTENTION EMPLOYEES: IF YOU COMPLETE THIS FORM, YOU ARE GIVING UP YOUR RIGHT TO RECEIVE HEALTH CARE SERVICES FROM THIS EMPLOYER

- **You do not have to sign this form. It is unlawful for your employer to pressure you to sign this form. Signing this form may make you ineligible for health benefits you would otherwise be entitled to.**
- **Read the form carefully. If you have any questions about this form or your employer's obligations under the Health Care Security Ordinance, please call 415-554-7892 or visit www.sfgov.org/olse/hcso. Para asistencia en español, llame al 415-554-7892. 需要中文幫助，請電 554-7892**

The San Francisco Health Care Security Ordinance requires this employer to make health care expenditures on your behalf, even if you already have health insurance and/or receive health care services from another employer. A health care expenditure is an amount of money paid by your employer to provide you with access to health care services. For example, your employer may:

- make payments to enroll you in a health insurance program,
- make payments on your behalf to the City Option program (MRA or Healthy San Francisco), and/or
- establish and maintain a reimbursement account for your health care expenses.

Your employer may request that you waive its legal obligations to spend money on health care services for you if you are currently receiving health care services from another employer. Your employer must obtain an updated and signed Voluntary Waiver Form from you each year that you agree to waive its legal obligations. **Even if you receive health care services through another employer** (ie, your other job, your spouse/domestic partner/parent's job)**, you are entitled to receive health care services from THIS employer.** If you sign this form, you are telling this employer it can stop making a mandatory health care expenditure on your behalf **Even if you choose to sign this form, you have the right to revoke or cancel it at any time.**

ARE YOU ELIGIBLE TO WAIVE HEALTH CARE SERVICES?

Examples of Employees who should not sign this waiver are:

- Employees who do not receive healthcare services from another employer
- People who pay for their own insurance out of pocket, or whose families pay for their insurance;
- People who are uninsured;
- Medi-Cal recipients;
- Participants in county-run medical programs (ie, San Mateo County Health Plan, Health PAC (Alameda Co.), etc.

If you have questions about whether you are eligible to sign this waiver, please call 415-554-7892.

I acknowledge that I have read the above statement.

Employer Name: _____

Employee Name: _____

Today's Date: _____

San Francisco HCSO:
The New Voluntary Waiver Form

Full Alert: http://www.theabdteam.com/abd-insights/newsletter/abd-compliance-alert-new-sf-hcso-waiver-form-updated-november-1

New form effective November 1, 2017

Employers may use **electronic version** of the form as long as all of the following conditions are satisfied:

1) The text of the electronic form is identical.
2) The employee can view the entire form when signing electronically.
3) The website containing the form does not state or imply that that the employee is required to provide the form.

Note this major shift from the prior electronic copy rules that required the employee receive a hard copy of the form.

- New rules took effect October 29, 2017

Wrap Up
Takeaways

2017 Year In Review:
Takeaways

Three Key Points to Remember:

A

The GOP spent most of 2017 in an ultimately futile effort to repeal and replace the ACA. The House actually passed the AHCA, but Senate efforts stalled with the slim 52-48 majority not sufficient to garner a majority for any proposals. Even the "skinny bill" failed to receive 50 votes.

B

The result is that the ACA continues in effect, particularly the employer mandate pay or play rules and the associated ACA reporting requirements. Employers should re-double their focus as penalty letters begin to arrive ~~and the Cadillac Tax still looms on the horizon~~. The individual mandate repeal will have only minor effects on employers—but will it renew broader repeal/replace efforts?

C

The Tax Cuts and Jobs Act did not end up significantly affecting employee benefits. A few tax breaks bit the dust, but the industry was largely (fortunately) left unscathed. The paid family and medical leave tax credit's limited scope leaves much room for Ivanka's grander child care design going forward. Plus, don't forget California leave law changes and all the latest and greatest in SF!

Content Disclaimer

2017 Year in Review

The intent of this analysis is to provide the recipient with general information regarding the status of, and/or potential concerns related to, the recipient's current employee benefits issues. This analysis does not necessarily fully address the recipient's specific issue, and it should not be construed as, nor is it intended to provide, legal advice. Furthermore, this message does not establish an attorney-client relationship. Questions regarding specific issues should be addressed to the person(s) who provide legal advice to the recipient regarding employee benefits issues (*e.g.*, the recipient's general counsel or an attorney hired by the recipient who specializes in employee benefits law).

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Thank you!

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Insurance &
Financial Services