2018 Hot Topics for Health & Welfare Plans, Fringe Benefits, and Withholding Rates

Presented by Winston & Strawn's Employee Benefits and Executive Compensation Practice

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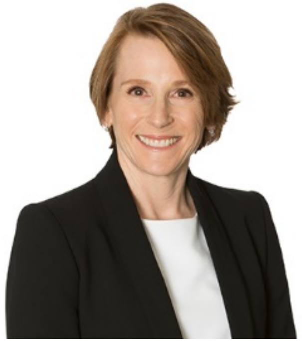
Today’s eLunch Presenters

Joanna Kerpen
Partner
Washington, D.C.
jkerpen@winston.com



Susan Nash
Partner
Chicago
smnash@winston.com

Ruth Wimer
Partner
Washington, D.C.
rwimer@winston.com

Jamie Weyeneth
Partner
Chicago
jweyeneth@winston.com

James Isaac
Of Counsel
Chicago
jisaac@winston.com

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2018 Hot Topics Covered Today

- Updates on Affordable Care Act (ACA) Employer Shared Responsibility
- Tax Act Changes to the ACA
- Tax Act Changes to Employer Tax Withholding Rates
  - Including for Bonuses and Other Supplemental Payments
- Tax Act Changes to Fringe Benefit Rules

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Updates on Affordable Care Act (ACA) Employer Shared Responsibility

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Overview of ACA Employer Shared Responsibility (ESR) Penalties

- Employer mandate = for all “full-time employees” (FTEs) and dependents, must offer “affordable, minimum value” coverage or potentially pay penalty
- 4980H(a) penalty
  - “Minimum essential coverage” for <u>less than</u> 95% (70%) of FTEs
  - At least one FTE receives a subsidy
  - “A-Penalty” = 1/12 x (Total FTEs – 30) x $2,000 *[adjusted for inflation]*
- 4980H(b) penalty
  - “Minimum essential coverage” for <u>at least</u> 95% (70%) of FTEs
  - FTE not offered affordable, minimum value coverage receives a subsidy (“assessable FTEs”)
  - “B-Penalty” = 1/12 x assessable FTEs x $3,000 *[adjusted for inflation]*

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ESR Cycle

- **Prior to Open Enrollment:** Employer determines medical plan design, sets employee contribution for medical coverage, and identifies eligible full-time employees
- **Open Enrollment:** Eligible employees decide whether to enroll in Employer coverage for the next plan year
- **Throughout the Plan Year:** Employer monitors new variable hour employees and offers coverage upon eligibility
- **First Quarter:** Employer reports full-time employees and employer medical plan coverage on Form 1095-C
- Marketplace exchanges notify employers that an employee has received a subsidy
- IRS compares Form 1095-Cs against list of individuals who purchased individual marketplace insurance coverage who received a federal subsidy
- **IRS proposes and assesses ESR penalties**

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ESR Penalty Assessment

- IRS issues Letter 226J to large employers who may owe a penalty
  - ESR payment summary table showing the proposed penalty for each month
  - Form 14765, Employee Premium Tax Credit (PTC) Listing – shows individual assessable FTEs
  - Form 14764, ESRP Response
- Employer either objects or agrees to pay assessed penalty using Form 14764
- IRS responds using Letter 227, describing further actions the employer may need to take, showing revised ESR penalty
- Employer may request a pre-assessment conference with IRS Office of Appeals
- IRS assesses ESR penalty and issues Notice and Demand for payment, Notice CP 220J

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Got Letter 226J? What To Do Next?

- Pay attention to the "Response date" listed on the first page of Letter 226J (https://www.irs.gov/pub/notices/ltr226j.pdf)
  - Important to send a response to the IRS by that deadline (30 days)
- Confirm IRS findings
  - Is the company a large employer subject to ESR mandate?
  - Does information on Form 14765 match Form 1095-C?
  - Were employees on Form 14765 properly reported to IRS?
- Submit Form 14764
  - Pay proposed ESR penalty
  - Explain reason(s) for disagreement and note corrections to Form 14765

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ESR – Extension for 2017 Reporting

- Deadlines for 2017 reporting following extension provided in Notice 2018-06
  - Forms 1095-C and 1095-B to Individuals: March 2, 2018 (30-Day Extension)
  - Forms 1094-C, 1094-B, 1095-C, and 1095-B to IRS: April 2, 2018 for Electronic Filers (Unchanged)
    - Existing opportunity for automatic extension remains (Form 8809)
- Good faith transition relief extended for 2017 reporting
  - Applies for incorrect or incomplete information reported on forms
    - For example, missing or inaccurate taxpayer ID numbers and dates of birth
  - No relief for failure to make good faith compliance effort or for untimely reporting

Tax Act Changes to the ACA

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Tax Act Repeal of ACA Individual Mandate

- ACA individual mandate: obtain MEC, or pay a penalty
- Tax act effectively repeals individual mandate in 2019
  - Remains in effect for 2018
- Potential impact on employers
  - Employer mandate and employer reporting remain in effect
  - Private individual market and public exchanges less viable option
  - Increased provider costs for remaining payers, such as employer plan sponsors
  - Could see fewer enrollees
  - Some states may retain individual mandate

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Tax Act Changes to Employer Tax Withholding Rates

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Tax Reform – Withholding Changes

- Changes in personal tax liability, such as lower rates, has resulted in changes in employer withholding responsibilities
- IRS issued Notice 1036 with new withholding rates
  - Employers must implement the new rates as soon as possible, but not later than February 15, 2018
  - Until the new rates are implemented, the employer should continue using the 2017 rates as well as the current Form W-4

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Tax Reform – Supplemental vs. Regular Wages

- Supplemental payments are any payments other than regular wages
- Withholding is required on supplemental payments at either a flat rate, or at a graduated rate similar to regular wages
  - The supplemental flat rate for payments at or less than $1,000,000 may only be used if the employee had other regular wages in the same or preceding year, and if the supplemental wages are separately stated
  - The new flat rate for supplemental payments at or less than $1,000,000 is 22% (no more, no less)
  - Withholding for supplemental payments in excess of $1,000,000 must always be at 37% (no more, no less)

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Tax Reform – Withholding on Regular Wages

- Notice 1036 provides early release Percentage Method regular wage withholding rates
- IRS will issue new Form W-4 to reflect the effect of new tax rules. Until then, employers will continue to use the Form W-4 on file
- IRS also intends to provide a means by which employees can calculate an estimate of personal tax liability for wage withholding purposes
- If an employee does choose to now provide a new Form W-4, the employer must follow it

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Tax Act Changes to Fringe Benefit Rules

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Tax Reform – Fringe Benefits

- Qualified transportation fringe benefits
  - Pre-tax deferral remains for employees, employer deduction removed
  - Pre-tax bicycle commuting reimbursement removed
- Moving expense reimbursement
  - No longer tax-free to employee or deductible for employer
  - Scheduled to sunset in 2025

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Tax Reform – Fringe Benefits (cont.)

- In addition to qualified transportation fringe benefits and qualified moving expenses, additional employer deductions were affected by tax reform:
  - Deduction for entertainment, amusement, and recreation activities (even if directly related to or associated with the conduct of the taxpayer's trade or business)
  - Deduction for meals, food, and beverages
    - Impacts the operation of an employee cafeteria located on or near the employer's business premise
  - Deduction for on-site athletic facilities

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Tax Reform – Fringe Benefits (cont.)

- Employee achievement awards
  - Clarification on what is included in length of service and safety employee achievement awards

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Tax Reform – Paid Leave Credit

- Paid leave credit
  - Available to employers for wages paid in 2018 and 2019 to “qualifying employees” on FMLA
    - Must provide at least two weeks of paid leave equal to at least 50% of the wages normally received by the employee on leave
    - A “qualifying employee” is an employee who has been employed with the employer for at least a year, and whose compensation for the preceding year was not in excess of 60% of the compensation threshold for highly compensated employees (HCEs)

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Tax Reform – Paid Leave Credit (cont.)

- Written policy requirement
  - Policy must provide at least two weeks of paid family and medical leave
  - Certain leave does not count for this purpose (*e.g.*, vacation, personal, state or local government mandated leave)
- Credit ranges from 12.5% to 25% of the cost of each hour of paid leave

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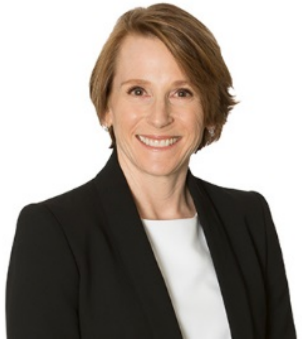
Questions?

Thank You.

Joanna Kerpen
Partner
Washington, D.C.
jkerpen@winston.com



Susan Nash
Partner
Chicago
smnash@winston.com

Ruth Wimer
Partner
Washington, D.C.
rwimer@winston.com

Jamie Weyeneth
Partner
Chicago
jweyeneth@winston.com

James Isaac
Of Counsel
Chicago
jisaac@winston.com

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