

# Tax Reform's Impact on Fringe Benefits and More COLA Adjustments

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We previously addressed the Tax Cuts and Jobs Act ("TCJA") impact on Health Savings Account contribution limits for 2018. The TCJA changes to inflation adjustments also reduced the amount an employer can provide as adoption assistance to an employee without resulting in federal income tax to the employee. The new limit on adoption assistance benefits for 2018 is now \$13,810 instead of \$13,840 per Rev. Proc. 2018-18. The same Rev. Proc. also reduced the amount of health insurance premiums a small employer can use to determine its small employer health insurance tax credit from \$26,700 to \$26,600 for 2018.

## TCJA and Qualified Transportation Fringe Benefits

The TCJA changed a couple of the commuting benefits. First qualified bicycle commuting reimbursements will not be excludable from an employee's income from January 1, 2018 through January 1, 2026 and so if these reimbursements continue, they are taxable to the employee if they are continued during this period.

After the TCJA denied employers deductions for qualified transportation benefits, it came to light that some thought that re-characterizing qualified transportation benefits as benefits elected via a bona fide reimbursement arrangement or via a salary reduction agreement might preserve the deduction for the employer; however, IRS Publication 15-B for 2018 clarifies that no deduction is permitted to an employer for any transportation, or for any payment or reimbursement to employees for commuting expenses, except as necessary for the safety of the employees. *This is intended to clarify that amounts an employer might seek to deduct as compensation which were part of a salary reduction agreement to pay for the transportation expenses are still not deductible by the employer, even if it is not a direct employer payment of the transportation expenses. This only impacts the employer's deduction, it does not change the fringe benefit exclusion that precludes the amounts from being treated as taxable W-2 wages for employees.* It is also important to remember that there are laws in addition to tax laws that should be considered when designing benefits.

## Other Reminders

*Do you know where a disabled status makes a difference in one of your benefits?* The April 1, 2018 date by which ERISA plans that make benefit determinations based on disability status must comply with the new disability claims procedures is rapidly approaching. It is important to remember that these rules can apply to many plans that are not providing disability income benefits if they determine a participant's rights based on his disabled status. For example, a life insurance plan that waives premiums for individuals who are disabled, a 401(k) plan that permits distributions when the participant is disabled, a pension plan that provides for a disability pension benefit, or a short term disability plan that is set up with an administrative scheme to be an ERISA plan rather than a payroll practice to avoid state law based claims for damages related to benefit denials. The impacted plans' language and summary plan description should be updated to reflect this change and it is important to verify that the relevant claim adjudicators are also ready to preserve a better standard of review under the new regime and reduce risk.

*Is your health plan's record keeper ready for the shift in reporting on Medicare Secondary payer claims?* Medicare is in the process of transitioning from the use of the HCIN to the new Medicare Beneficiary Identification numbers. Employers with self-insured health plans should work with their health plan's claims administrator to ensure that the administrator is on track to capture the new identification numbers that will be fed back on claims submitted to Medicare under the voluntary data sharing agreements. The plan should verify with its vendor that it will capture this data returned from the Medicare program and retain it in its files. Employee enrollment materials should request the Medicare Beneficiary Identification number as well as the HCIN until the transition period is complete in April 2019 so that the claims administrator has the correct information for Medicare secondary payer compliance. Medicare beneficiaries will begin receiving new Medicare ID cards in April 2018 and continuing through April 2019. Penalties for violation of Medicare

Secondary Payer rules have been escalated for inflation recently resulting in significantly larger penalties that can be imposed for noncompliance.

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