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Looking Back and Ahead on Health, Retirement and Tax News for Small Employers in 2018

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This year is already bringing quite a few developments for small employers, including welcome regulations and legislative changes. And since the year isn't quite done, we're likely to see even more changes before the year is through. This article highlights key changes so far relating to health plans, retirement plans and federal taxes, as well as a look to what still lies ahead.

HEALTH

The president's executive order on health

President Trump issued an executive order in October 2017 directing federal agencies to modify regulations to increase competition and choice in health care and lower health care costs. The order listed three specific areas for reform:

» *Expand access to association health plans (AHPs):* The Department of Labor issued final AHP rules in June 2018 that make it easier to form AHPs at the federal level; new (and existing) barriers still exist in many states. AHPs offer an opportunity for otherwise unrelated small employers to group together to form a single large group health plan, thus avoiding certain ACA rules applicable to small-group insured plans.

» *Expand the availability of short-term limited duration insurance (STLDI):* Until recently, STLDI was generally limited to a total coverage period of less than 12 months. New regulations issued in August 2018 allow STLDI to have a total coverage period (including any insurer-approved renewals) of up to 36 months. This brief guide helps explain the difference between STLDI and other health coverage options.

» *Expand Health Reimbursement Arrangements (HRAs):* Currently, the ACA generally prohibits employers from paying for employees' individual market major medical insurance. Certain small employers, however, can do this by adopting a qualified small-employer health reimbursement arrangement (QSEHRA). However, QSEHRAs are generally available only to employers with fewer than 50 full-time equivalent employees that sponsor no other health coverage of any sort. The QSEHRA rules are complex, and uptake so far has been fairly slow. The executive order directs federal agencies to expand the ability of employers to offer HRAs and allow HRAs to be used in connection with individual market coverage. The rules are expected to offer more opportunities for both small and large employers. The new rules are in the drafting stage and should be available soon.

Repeal of the ACA individual mandate

Starting Jan. 1, 2019, individuals who do not have qualifying health coverage will no longer face a tax penalty. The penalty remains in effect for 2018.

"Cadillac plan" tax delay

The so-called "Cadillac plan" tax is a 40 percent excise tax on the cost of employer-sponsored health coverage that exceeds specified dollar thresholds. The tax was originally scheduled to go into effect in 2018 but has been delayed several times. Under legislation enacted in January 2018, the tax is currently postponed until 2022. The tax is still under consideration by Congress. While nothing more has happened yet, it's possible a further delay will be part of post-election lame-duck legislation.

Health savings account (HSA) update

HSAs provide a tax-favored means for individuals to save and pay for medical expenses not covered by insurance. HSAs are one type of defined contribution approach to employment-based health coverage. In order to contribute to an HSA, an individual must be enrolled in a high-deductible health plan (HDHP), and no other health plan other than certain limited types of coverage (e.g., accident or disability). HSA contribution and HDHP limits are updated by the IRS each year based on inflation.

HSA and HDHP LIMITS

Limit	Self-Only Coverage		Family Coverage	
	2018	2019	2018	2019
Maximum annual contribution (including both employer and employee contributions):	$3,450	$3,500	$6,900	$7,000
The HDHP annual deductible must be at least:	$1,350	$1,350	$2,700	$2,700
The maximum OOP expenses under the HDHP cannot exceed:	$6,650	$6,750	$13,300	$13,500

Individuals age 55 and older who are not enrolled in Medicare may make an additional $1,000 contribution each year. This catch-up contribution amount is not indexed for inflation. Legislative proposals that would enhance HSAs and make them easier to use have recently passed the U.S. House of Representatives, but the Senate has not yet acted. Proposals under consideration include allowing certain chronic care expenses to be paid from an HSA before the deductible is met, simplifying catch-up contributions for spouses who both have HDHP coverage and increasing contribution limits.

RETIREMENT

On Aug. 31, 2018, the president issued an executive order aimed at strengthening retirement security in America. The order addresses three specific areas for regulatory action.

- *Expand access to multiple employer plans (MEPs):* The order directs the Department of Labor (DOL) to issue new rules to clarify and expand the circumstances under which employers, particularly small and mid-sized employers, may sponsor or adopt an MEP. An MEP is similar to a traditional 401(k) plan but offers smaller employers the advantages of cost savings that are associated with large-employer plans and reduced administrative burdens for the employer. The order also aims to allow sole proprietors, working owners and independent contractors to participate in MEPs. The IRS is directed to update tax rules to be consistent with the new DOL guidance and reduce barriers to MEPs. A proposed DOL rule is in the drafting stage and should be available soon.
- *Improve notice requirements:* The DOL and IRS are directed to make retirement plan notices more understandable and useful for plan participants, while also reducing the costs and burdens on employers and other plan fiduciaries. Among other things, the agencies are to consider expanding the use of electronic delivery of required notices.
- *Update required minimum-distribution rules:* The order directs the IRS to review the life expectancy and distribution tables currently used for determining required distributions from tax-qualified plans. The objective is to bring the tables up to date so that retirement funds can be drawn out more slowly, rather than forcing larger distributions earlier on.

Congress is also looking at a variety of retirement-related legislative changes this year, including provisions targeted at some of the same issues as the executive order. Both the House and Senate are working on proposals, and it's possible that some helpful provisions may be included in 2018 year-end legislation.

TAXES

The Tax Cuts and Jobs Act (TCJA) contains the most sweeping changes to federal tax laws in decades. Enacted at the tail end of 2017, most of the provisions are first effective starting in 2018. In many respects, the law lives up to its name by significantly reducing tax rates for businesses and individuals. However, in order to help pay for reduced rates and other tax relief, the law also cuts back on and repeals some prior tax credits and deductions. The end result will differ based on the particular circumstances.

WHAT'S NEXT?

Before the end of 2018, we are expecting to see additional regulations based on the president's executive orders on health and retirement. Congress will be back for a lame-duck session following elections, creating the possibility of additional legislative changes this year, including a possible further delay of the Cadillac plan tax and retirement legislation that will benefit small businesses.

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