



Tax Reform Law Includes Paid Leave, Sexual Harassment Settlement Provisions

Insights

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The Tax Cuts and Jobs Act (H.R. 1), passed by Congress on December 20 and expected to be signed into law by President Trump in the coming days, contains several provisions that will directly impact employers and workplace law. Human resources managers, in-house counsel, and business owners will want to familiarize themselves with these provisions in order to capitalize on the changes and adjust practices as necessary.

Confidential Sexual Harassment Settlements

The most significant change eliminates the ability of a business to take a tax deduction for any sexual harassment settlement that contains a confidentiality provision or a nondisclosure agreement (NDA). Section 13307 of the law provides that no deduction shall be allowed for “(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or (2) attorneys’ fees related to such a settlement or payment.”

The purpose of this change is to disincentivize employers from entering into confidential settlements involving allegations of sexual harassment, as some believe that NDAs play a role in allowing bad actors to continue their harassing ways. Employers will soon be forced to choose between deducting sexual harassment settlements and related attorneys’ fees, and keeping such settlements confidential. This rule will apply to settlements made or paid after the president signs the legislation.

Paid Leave Credit

Section 13403 of the Act offers businesses a tax credit if they offer up to 12 weeks of paid family leave to certain eligible workers. Eligible employers must have a written policy that provides not less than two weeks of annual paid family and medical leave for full-time employees, and a pro-rata amount provided at the same ratio for part-time employees. The policy must provide payment at a rate not less than 50 percent of the wages normally paid to employees on leave. Further, the leave must specifically state that the employer will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any paid leave right, and will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

Critics of this provision believe it will do little to advance paid leave protections because the tax credit only lasts two years before it has to be re-evaluated by Congress.

Miscellaneous Provisions

The lengthy new law also contains a variety of other provisions, including:

- Employers will find that certain fringe benefit deductions are repealed or changed, including ones typically used to recruit new hires. Section 13304 lowers the amount that businesses can deduct relating to the cost of food and beverages provided to their workers.
- Section 13703 removes tax incentives that employers can provide for commuter and parking benefits. Currently, businesses can provide up to \$255 per month for such fringe benefits and write them off as business expenses. As of amounts paid or incurred after December 31, 2017, however, the incentives will be eliminated.

This non-exhaustive list includes just some of the highlights of the law's many changes. Others – including the repeal of the Affordable Care Act's individual mandate in 2019 – will be covered by our [Employee Benefits Practice Group](#) in an upcoming summary. If you have questions about this new law, please contact your regular Fisher Phillips attorney.

This Legal Alert provides information about specific legislation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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