

Employee Benefits Implications of the Bipartisan Budget Act

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The Bipartisan Budget Act of 2018 ("Act") was signed into law on February 9, 2018. It includes certain provisions impacting employee benefits, 401(k) plans in particular. The following is a brief description of some notable changes.

Hardship Relief

For plan years commencing after December 31, 2018, the Act eases hardship withdrawal requirements by:

- Not requiring a plan loan to be taken before a hardship withdrawal is made.
- Allowing hardship withdrawals to include QNECs, QMACs, safe harbor contributions, and earnings from all eligible sources.
- Deleting the six-month suspension on deferrals following a hardship withdrawal.

The Act directs the Treasury to modify applicable regulations within one year from the Act's enactment to delete the six-month suspension and to "make any other modifications necessary to carry out the purposes of" the hardship withdrawal provisions of the Internal Revenue Code. Presumably, amendments required to reflect these changes will need to be adopted before 2020 unless the IRS provides otherwise.

California Wildfires Disaster Relief

Similar to the relief provided for Hurricanes Harvey, Irma and Maria under the *Disaster Tax Relief and Airport and Airway Extension Act of 2017* (see [Client Advisory](#)) and for certain other disasters under *The Tax Cuts and Jobs Act* (see [Client Advisory](#)), for those individuals affected by the wildfires, the Act:

- Provides penalty-free access to retirement funds through "qualified wildfire distributions" of up to \$100,000, allows the amount distributed to be repaid over 3 years, and allows taxpayers who cannot repay the distribution to spread out any income inclusion over 3 years.
- Allows for the repayment of certain retirement plan withdrawals (e.g., a hardship withdrawal) for home purchases that were cancelled on account of the wildfires.
- With respect to retirement plan loans, increases the maximum amount that a participant can borrow to the lesser of \$100,000 or 100% of the participant's vested account, delays certain repayment dates, and provides for a longer repayment term by delaying the due date of the

first repayment by one year and adjusting remaining repayment dates accordingly.

Any amendment required to implement the wildfire relief provided by the Act must generally be in place before December 31, 2019 (for calendar year plans).

This relief is in addition to the relief previously provided by the IRS on related matters. That relief permits, among other things, 401(k) plans to make loans and hardship distributions to wildfire victims and members of their families up to the specified statutory limits. Such distributions can be made before a plan is formally amended to provide for such features, and plans can relax their verification procedures. In addition, a plan can ignore the “safe harbor” rules that typically apply to hardship distributions, thereby allowing funds be used for food and shelter. Any amendment required to implement the IRS relief must generally be in place before December 31, 2018 (for calendar year plans). **Hurricanes Harvey and Irma Disaster Area Modification**

For purposes of the relief provided in the *Disaster Tax Relief and Airport and Airway Extension Act of 2017*, the Act expands the definitions of Hurricanes Harvey and Irma disaster areas to mean, in both cases, those areas with respect to which a major disaster has been declared by the President before October 17, 2017 (previously, before September 21, 2017). **Relief for Improper Tax Levy on Retirement Plans**

An individual who receives a refund of amounts erroneously garnished from an eligible retirement plan may recontribute those amounts (e.g., roll the refund plus interest into a 401(k) plan or IRA) to prevent taxation. The contribution must be made no later than the due date (not including extensions) for filing the individual’s tax return for the year the refund is made. This relief applies to amounts paid beginning in 2018. **Health Related Provisions**

While the Act does not change any of the Affordable Care Act’s tax provisions or include provisions regarding market stabilization measures, it extends the Children’s Health Insurance Program (“CHIP”) for an additional four years. As a result, CHIP has full funding through fiscal year 2027.

If you have any questions or compliance concerns, please contact our [Employee Benefits](#) group.