Federal Budget Deal Is Nice (Mostly) to Employer Group Health Care Plans

Spending deal repeals three Affordable Care Act (ACA) taxes, revives Patient-Centered Outcomes Research Institute (PCORI) fee; paid leave for federal employees foreshadows 2020 policy fights.

December 2019

The federal budget deal passed by Congress and signed into law by President Trump on December 20, 2019, repealed three health care taxes that funded the ACA, while reviving and extending until 2029 the fee funding the PCORI. The budget measure, which averted a government shutdown, also contained several provisions intended to encourage and subsidize paid family leave programs.

Spending Deal Trades In Cadillac Tax, Repeals Health Insurer and Medical Device Taxes, but Extends PCORI Fee

Almost 10 years after its adoption, the ACA's 40% tax on high-cost medical plans, known to employers as the "Cadillac tax"—the tax that virtually every employer planned for but that no one ever paid—is headed for the junk pile.

After delaying the Cadillac tax three times since the ACA debate in 2009, Congress repealed the Cadillac tax, effective January 1, 2020. Congress also repealed two other taxes funding the ACA: the 2.3% tax on advanced medical devices, effective January 1, 2020, and the health insurer tax, effective January 1, 2021.

However, Congress revived and extended the PCORI fee, which had expired earlier this year. The PCORI fee, adopted in the ACA, is paid by issuers of health insurance policies and plan sponsors of self-insured health plans to help fund the Patient-Centered Outcomes Research Institute. The fee is based on the average number of lives covered under the policy or plan. The PCORI fee will now apply to policy or plan years ending on or after Oct. 1, 2012, and before Oct. 1, 2029. The PCORI fee is filed using Form 720, Quarterly Federal Excise Tax Return. Although Form 720 is a quarterly return, for the PCORI Form 720 is filed annually only, by July 31.

Spending Deal Contains Family Leave Measures

Three leave-related provisions included in the federal budget deal—in particular, the federal employee-paid parental leave law described below—are harbingers of 2020's paid leave policy debate for private sector employers. The federal government is the nation's largest employer and its new policy may spur private sector employers to implement or expand paid parental and family leave programs as the competition for talent continues into 2020.

Paid Parental Leave for Federal Employees

As of October 2020, the federal government's roughly 2.1 million employees will be able to take up to 12 weeks paid parental leave for the birth, adoption, or fostering of a child. Federal employees will be eligible after one year of service with the government. Employees will be required to return to work for at least 12 weeks following conclusion of the leave, though that requirement can be waived for medical reasons.

Extension of the Paid FMLA Tax Credit

Congress extended through 2020 the paid family and medical leave tax credit pilot program that was enacted in 2017. Under this program, an employer that provides paid Family and Medical Leave Act (FMLA) benefits to certain employees is eligible for a general business tax credit under Code Section 45S of 12.5% to 25% of wages paid to qualifying employees for up to 12 weeks of family and medical leave per taxable year. The reasons for the leave mirror those under the FMLA of 1993 and are thus broader than paid parental leave.

Penalty-Tax-Free Retirement Plan Distribution for New Parents

The budget deal permits new parents to take a penalty-tax-free distribution from an eligible retirement plan of up to $5,000, providing a means for new parents to finance part of an otherwise unpaid leave. The penalty-free distribution is available within one year following the birth of a child or placement of a child with the individual. The parent may, but is not required to, repay the amount distributed from the plan.

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