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2018 BENEFIT PLAN LIMITS

In **Revenue Procedure 2017-58**, the IRS released 2018 inflationary or cost of living adjustments relating to several types of benefits, as follows (also see *IRS News Release*).

QSEHRA Payments and Reimbursements. A qualified small employer health reimbursement arrangement, known as a “QSEHRA”, allows eligible small employers (those employing fewer than 50 employees and who do not offer health coverage) to reimburse health insurance premium for individual coverage purchased either through or outside the marketplace. Such arrangement must meet certain criteria, specifically, the QSEHRA:

1. Must be funded solely by the eligible small employer; no salary reduction contributions can be made under this arrangement; and,
2. Provides, following the employee’s proof of coverage, for the payment or reimbursement for medical care expenses, as defined in IRC Section 213(d)), including premium for health coverage through the individual market, incurred by the eligible employee or his/her family members. For 2017, the annual amount of payments and reimbursements is capped at \$4,950 for employee-only, or \$10,000 for arrangements that provide for payments or reimbursements for the employee’s family members. Both of these limits are subject to inflationary adjustments. Accordingly, beginning in 2018, the total amount of payments and reimbursements is capped at \$5,050 for employee-only; \$10,250 for family coverage.

As a reminder, the total amount of permitted benefits received under a QSEHRA must be reported in Box 12, using Code FF of the Form W-2.

Flexible Spending Account (FSA) Cap. The amount that can be contributed to a health flexible spending account (FSA) through voluntary salary reductions for plan years beginning in 2018 will increase to \$2,650, up from \$2,600 in 2017.

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Qualified Transportation Fringe Benefits. With regard to transportation expenses reimbursed by an employer and excludable from the employee's income under a qualified transportation program, the limits for 2018 slightly increase from 2017:

	2018	2017
COMMUTER HIGHWAY VEHICLE (VAN POOLING) AND ANY TRANSIT PASS	\$260	\$255
QUALIFIED PARKING	\$260	\$255

As a reminder, if an employer sponsors a *qualified bicycle fringe benefit plan*, a participating employee who uses a bicycle for traveling between his/her home and place of employment would be entitled to receive a reimbursement of up to \$20 per month (\$240 annually) for qualified bicycle expenses. This limit is not indexed nor tied to a cost of living adjustment.

Qualified Adoption Assistance Reimbursement Program (IRC §137). An employer-provided adoption assistance program that meets the qualifications of IRC §137, allows participants to recover expenses relating to adoption, such as reasonable adoption fees, court costs, attorney's fees and traveling expenses. Below are the exclusion limits and AGI phase-out limits for 2018 and 2017:

	2018	2017
EXCLUSION LIMIT	\$13,840	\$13,570
AGI PHASE-OUT LIMITS	Between \$207,580 and \$247,580	Between \$203,540 and \$243,540

Health Savings Accounts. The 2018 annual limits applicable to health savings accounts were released earlier this year (see *Health Savings Accounts: 2018 Inflation Adjustments*, *Benefit Beat*, 5/8/17).

Archer Medical Savings Accounts. The Archer MSA pilot project ended on December 31, 2007; therefore, no new MSAs could be established after that date. For existing MSAs, the annual deductible limits of a high deductible health plan used in conjunction with an Archer medical savings account for 2018 are slightly increased:

	2018		2017	
	SINGLE	FAMILY	SINGLE	FAMILY
HDHP ANNUAL DEDUCTIBLE	Between \$2,300 and \$3,450	Between \$4,600 and \$6,850	Between \$2,250 and \$3,350	Between \$4,500 and \$6,750

Archer MSA, con't

	2018		2017	
	SINGLE	FAMILY	SINGLE	FAMILY
OUT-OF-POCKET EXPENSES	\$4,600	\$8,400	\$4,500	\$8,250

Long-Term Care Premiums. The IRS limitations relating to eligible long-term care premiums includible as medical care, as defined by IRC §213(d) are:

AGE AT END OF TAX YEAR	2018 PREMIUM LIMIT	2017 PREMIUM LIMIT
<40	\$420	\$410
>40 but <50	\$780	\$770
>50 but <60	\$1,560	\$1,530
>60 but <70	\$4,160	\$4,090
>70	\$5,200	\$5,110

2018 SOCIAL SECURITY COST-OF-LIVING ADJUSTMENT

The Social Security Administration **announced** a 2.0 percent cost of living adjustment for 2018.

The Social Security wage base in 2018 will increase to \$128,700 from the 2017 wage level of \$127,200. The combined Social Security and Medicare tax rate remains at 7.65% - the Social Security portion is 6.2% on wages up to the applicable maximum taxable amount; the Medicare portion is 1.45% on all wages.

As a reminder, the Affordable Care Act imposes an additional 0.9% Medicare tax on high wage earners, applicable on earnings in excess of \$200,000 in a calendar year.

Additional adjustments are included in the SSA's Fact Sheet: *2018 Social Security Cost-of-Living Adjustments*.

2018 PENSION AND RETIREMENT PLAN LIMITS

In **Notice 2017-64**, the IRS released the 2018 cost of living adjustments applicable to defined benefit and defined contribution plans (see highlights on Page 3). There is a slight increase in the annual limits applicable to defined benefit and defined contribution plans, as well as a slight increase in the annual compensation limit. Most of the other limits remain unchanged from 2017.

Also see IRS News Release, *IRS Announces 2018 Pension Plan Limitations; 401(k) Contribution Limit Increases to \$18,500 for 2018* (10/19/17), and IRS' COLA Table reflecting adjustments from 2016 to 2018.

2018 Pension and Retirement Plan Limits, con't

	2018	2017
Defined benefit plan annual limit	\$220,000	\$215,000
Defined contribution plan annual limit	\$55,000	\$54,000
Elective deferral limit for purposes of cash or deferred arrangements (401(k) plans) and tax-sheltered annuities (403(b) plans)	\$18,500	\$18,000
Maximum deferral limit for 457 plans	\$18,500	\$18,000
>Age 50 catch-up contribution limit to 401(k), 403(b) or 457(b) plans	\$6,000	\$6,000
Maximum deferral limit for SIMPLE plans	\$12,500	\$12,500
>Age 50 catch-up contribution limit to SIMPLE plans	\$3,000	\$3,000
Minimum compensation considered in determining eligibility for a SEP (simplified employee pension)	\$600	\$600
Threshold for highly compensated employee (HCE)	\$120,000	\$120,000
Key employee compensation limit for top heavy plan purposes	\$175,000	\$175,000
Annual compensation limit	\$275,000	\$270,000

PROPOSED DELAY - ENHANCED DISABILITY CLAIM RULES

About a year ago, the Department of Labor's Employee Benefits Security Administration (EBSA) issued final rules providing for enhanced standards for plans that make disability determinations (see *Disability Determinations: New Enhanced Rules Are Coming*, *Benefit Beat*, 1/5/17). These rules apply to any ERISA plan that makes a disability determination, including short and long term disability plans and retirement plans if such plan makes a disability determination. The rules were to become applicable to all claims for disability benefits filed on or after January 1, 2018.

Then this summer, the DOL signaled that it was intending to perhaps delay or amend these final rules due to questions of law and policy (see *Possible Delay or Amendments to Enhanced Disability Claim Rules*, *Benefit Beat*, 9/11/17).

On October 12, 2017, the DOL **formally released a proposed 90-day delay** of the effective date for implementation of these enhanced claim rules.

Comments on the proposed delay were to be received by October 27, 2017. If this proposal is finalized, the enhanced claim rules would become applicable to claims for disability benefits that are filed after April 1, 2018, rather than January 1, 2018.

INTERACTION OF MEDICARE AND COBRA

A recently issued **IRS Information Letter** explains the interaction between Medicare and COBRA continuation coverage. While this Information Letter does not break new ground, it provides a good summary of issues that frequently arise as it relates to the COBRA duration and Medicare coverage.

In summary, termination of employment or reduction in hours would give rise to up to 18 months of COBRA continuation coverage for all qualified beneficiaries, including the employee and any covered dependents. The continuation period may be extended up to 29 months if the qualified beneficiary is determined to be disabled by the Social Security Administration at any time prior to the 60th day following the qualifying event. If the employee was covered by Medicare prior to the date of the COBRA election, the employee remains entitled to the right to elect COBRA for up to 18 months. Covered dependents would potentially be entitled to an additional period of time of up to 36 months of COBRA, measured from the date of the individual's Medicare entitlement.

Not addressed in the Information Letter is the situation of Medicare coverage that arises *after the date* COBRA is elected. If Medicare coverage begins after the date the individual elects COBRA, then the Medicare coverage can terminate COBRA for the affected employee. This event does not provide an extended period of coverage for covered dependents.

PARENTAL LEAVE COMES TO SMALL EMPLOYERS IN CALIFORNIA

On October 12, 2017, Governor Jerry Brown signed a law that provides up to 12 weeks of unpaid parental leave to individuals who work for a covered small employer. This law (**Senate Bill 63**/Chapter 686) takes effect on January 1, 2018.

For purposes of this law, a *small employer* is one who employs at least 20 employees within 75 miles of an eligible employee's worksite. The law also applies to the state and local government jurisdictions.

To be *eligible* for the leave, the individual must have worked at least 1,250 hours for the employer during the previous 12-month period prior to the need for leave.

Eligible individuals are entitled to up to 12 weeks of job protected, unpaid leave to bond with a new child within one year of the child’s birth, adoption, or foster care placement. The employee can use vacation pay, paid sick time, other accrued paid time off, or other paid or unpaid time off, during the period of parental leave. In the event both parents are entitled to leave and employed by the same employer, the employer would not be required to provide more than 12 weeks of leave to the employees, and may grant simultaneous leave to both of these employees.

Continuation of health coverage. If the individual is covered under the employer’s group health plan at the time of taking leave, the employer is obligated to continue the individual’s coverage during the leave period, as well as continue to pay any employer contribution toward that coverage for up to 12 weeks, provided the leave does not exceed 12 weeks in a 12-month period. An employer may recover the premium it paid for the employee if the employee fails to return from leave for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

Job restoration. Upon return from the leave period, the employee is entitled to return to the same or comparable position the individual held at the time the leave commenced.

Coordination with other leave laws. If an individual is eligible for California Pregnancy Disability Leave (PDL), which provides up to four months of leave based on disability related to the pregnancy, and if the individual is entitled to leave under this new parental leave law, it is possible that the individual could receive up to 7 months of leave. In addition, the individual would be entitled to wage-replacement benefits under the state’s Paid Family Leave (PFL) program. It is also important to note that the state leave law(s) must be coordinated with any local paid or unpaid sick and family leave laws in the cities of Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco and Santa Monica.

Below is a quick snapshot chart of California state leave law requirements, as provided by the California Senate Rules Committee. Also see the [Chart of PDL, CFRA, and FMLA Requirements and Obligations](#) from the California Department of Fair Housing and Employment. Information relating to the California Paid Family Leave Program is available from the California Employment Development Department’s [website](#).

Snapshot of California Leave Laws				
	CALIFORNIA FAMILY RIGHTS ACT (CFRA) AND FEDERAL FAMILY AND MEDICAL LEAVE ACT (FMLA)	PAID FAMILY LEAVE (PFL)	PREGNANCY DISABILITY LEAVE (PDL)	NEW PARENT LEAVE ACT (SB 63-CHAPTER 686)
COVERED EMPLOYERS	50 or more employees in 75-mile radius of worksite	One or more (employee pays, employee gets)	Five or more employees	20 or more employees in 75-mile radius of worksite
EMPLOYEE ELIGIBILITY	Worked 1,250 hours in prior 12 months	Once employee earns \$300 in base period for fund contribution	Immediate as necessary	Worked 1,250 hours in prior 12 months
REASON FOR LEAVE	Employee’s own serious health condition; seriously ill family member care; bond with newborn or newly placed adopted or foster child	Care for seriously ill family member, bond with child within 1 year of birth, foster care or adoption placement	Disability due to pregnancy, childbirth, or related medical condition	Bond with a child within 1 year of birth, adoption or foster care placement
LENGTH OF LEAVE	12 weeks in 12-month period	6 weeks in 12-month period	Up to 4 months	Up to 12 weeks in 12-month period
PAID OR UNPAID	Unpaid, may run concurrent with other paid leave	Partial wage replacement	Unpaid, may run concurrent with short-term disability insurance (SDI) for partial wage replacement	Unpaid, employee can use accrued vacation, paid sick time
CONTINUED HEALTH COVERAGE	Yes	No	Yes	Yes
JOB PROTECTED	Yes	No	Yes	Yes

NEW YORK PAID FAMILY LEAVE: MODEL FORMS ISSUED

As mentioned in the [August](#) and [September](#) editions of the *Benefit Beat*, the New York paid family law takes effect January 1, 2018. The New York Workers' Compensation Board recently issued model paid family leave request and certification forms, as well as a model employee opt-out or waiver form.

To receive paid family leave benefits, eligible employees will be required to complete and submit a Request for Paid Family Leave Form (Form PFL-1). Employees would complete Part A of Form PFL-1 indicating the covered reason and the length of leave. Employers complete Part B of Form PFL-1 and return it to the employee within 3 business days. It is the responsibility of the employee to submit Form PFL-1, together with any required supporting documentation to the paid family leave insurer.

In addition to the Form PFL-1, employees requesting paid family leave must complete and submit one of the additional forms listed below, depending on the reason for leave:

- ◆ To bond with a newborn, adopted child, or foster child must complete and submit a Bonding Certification (Form PFL-2).
- ◆ To care for a covered family member with a serious health condition must submit both a Release of Personal Health Information (Form PFL-3) and a Health Care Provider Certification (Form PFL-4).
- ◆ To assist a family member with exigencies in connection with a military deployment must submit a Military Qualifying Event Certification (Form PFL-5).

For employees who are not expected to work a regular schedule of 20 or more hours per week for 26 consecutive weeks, or 175 days in a 52-consecutive week period, the employee can submit the employee opt-out or waiver form (PFL-Waiver). Employees who execute a waiver form would then be relieved from making payroll contributions to the cost of paid family leave benefits. If the employee's work schedule changes, such that the employee works 20 or more hours per week for 26 consecutive weeks, or works 175 days in a 52-consecutive week period, then the waiver would be revoked and the employee would then begin making payroll contributions to the cost of paid family leave benefits.

All of these forms are available on the dedicated [Model Form webpage](#). Additional information and program updates can be accessed on the Employer's [webpage](#).

PREGNANCY WORKPLACE PROTECTIONS EXPAND IN THE STATES

Workplace protections in accordance with federal, as well as state and local laws, are afforded to women affected by pregnancy, childbirth or related medical conditions. Specifically, the federal law requires that these women be treated the same as other individual for all employment-related purposes, including receipt of benefits.

In the past few months, several more states have enacted laws providing workplace protections and accommodations for pregnancy workers; among them are [Nevada](#), [Connecticut](#) and [Massachusetts](#).

The state of Washington enacted a similar law earlier this year, known as the *Healthy Start Act*, which requires employers with 15 or more employees to reasonably accommodate pregnant employees regardless of a disability. The law took effect on July 23, 2017, and is enforced both by Washington's [Department of Labor and Industries \(LNI\)](#) and the [Attorney General's Office](#).

This law provides richer benefits than either Washington's law against discrimination or the federal pregnancy discrimination act. Specifically the law requires employers to make the following accommodations available without regard to pregnancy related disability status.

The first four of these accommodations are not contingent upon a written certification from a healthcare provider nor is the employer entitled to claim economic hardship:

- ◆ Providing more frequent, longer, or flexible restroom breaks;
- ◆ Modifying a no food or drink policy;
- ◆ Providing seating or allowing the employee to sit more frequently if her job requires her to stand; and
- ◆ Limiting lifting to 17 pounds or less.

For the following five accommodations, the employer may request written certification from a healthcare provider and may claim economic hardship:

- ◆ Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or work station;
- ◆ Providing for a temporary transfer to a less strenuous or less hazardous position;
- ◆ Providing assistance with manual labor;
- ◆ Scheduling flexibility for prenatal visits; and



- ◆ Any further pregnancy accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the LNI or the employee's attending healthcare provider.

An employer cannot impose a reasonable accommodation on an employee; take adverse action against employee for requesting an accommodation; compel an employee to take leave if a reasonable accommodation can be provided; or deny employment opportunities to an employee if the denial is based on the employer's refusal to accommodate an employee.

Resources. For additional information about pregnancy accommodation and workplace protections in the states, as well as protections under federal law, visit the Department of Labor's webpage, [State-Level Provisions for Pregnancy Accommodation and Pregnancy-Related Disability](#).

ABOUT THE AUTHOR:

Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Kansas City office.

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