Robinson+Cole

Employee Benefits and Compensation

February 2018

Federal Budget Deal Includes Changes to Retirement Provisions

The Bipartisan Budget Act of 2018 (Act) was approved by Congress and signed into law by the President on February 9, 2018. Included in the Act are certain provisions impacting retirement plans that were initially considered for inclusion in the Tax Cuts and Jobs Act, but were dropped before the final tax bill was passed.

- **Disaster Relief for California Wildfires.** The Act provides disaster relief, which mirrors the relief provided to 2017 hurricane victims, to those affected by the California wildfires. Under the relief, certain distributions made on or after October 8, 2017, but prior to January 1, 2019, would be exempt from the 10 percent early withdrawal penalty, up to $100,000. Such distributions may be repaid within the 3-year period following the distribution, and the distribution amount may be included in the recipients' income over a 3-year period. Additionally, the relief provides for increased plan loan limits and repayment relief for qualified recipients.

- **Changes to Hardship Withdrawals.** The following changes will impact hardship withdrawals for plan years beginning after December 31, 2018:
    - Removal of Six-Month Prohibition on Contributions Following Hardship Withdrawals. The Act charges the IRS with modifying administrative guidance by February 9, 2019, to permit plan participants to continue contributing to the plan immediately following the distribution of a hardship withdrawal.
    - QNECs, QMACs and Profit-Sharing Contributions May be Included in Hardship Withdrawals. Plan sponsors are permitted to allow participants to take hardship withdrawals from qualified non-elective contributions, qualified matching contributions, profit sharing contributions, and any interest earned thereon.
    - Loan Prior to Hardship Withdrawals. The requirement that a participant take a plan loan prior to a hardship withdrawal is eliminated.

- **Improper IRS Levies.** The Act adds a new Code Section that, if permitted under the terms of the plan, allows an individual to begin recontributing to an individual retirement account or employer-sponsored retirement plan, within a specified timeframe, any amount withdrawn from such plan (including interest) pursuant to a levy that was later returned to the individual.

- **Joint Select Committee on Multi-Employer Pension Plans.** In an effort to address multi-employer pension plan solvency issues, a new bipartisan committee will be formed. The new committee will include 12 members, 6 from each chamber of Congress and an equal number of members from each political party.

Some of these changes may require amendments to plan documents. Plan sponsors are encouraged to consult with counsel prior to implementing any changes to ensure compliance with the Act.

Robinson+Cole's Employee Benefits and Compensation Group is available to assist clients in reviewing their fiduciary responsibilities with respect to employer-sponsored retirement plans. If you have any questions about the fiduciary rule or the Memorandum in general,
please contact any of the following lawyers:

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