

Considerations for employers

Employers should consider the following issues as they close out 2022 and enter 2023:

- ❑ Employers have until the extended due date of their 2022 federal income tax return to retroactively establish a qualified retirement plan and to fund the new or an existing plan for 2022. However, employers cannot retroactively eliminate existing retirement plans (such as simplified employee pensions (SEPs) or SIMPLE plans) to make room for a retroactively adopted plan (such as an employee stock ownership plan (ESOP) or cash balance plan).
- ❑ Contributions made to a qualified retirement plan by the extended due date of the 2022 federal income tax return may be deductible for 2022; contributions made after this date are deductible for 2023.
- ❑ Employers can reimburse employees tax-free for up to \$5,250 per year in student loan debt, through December 31, 2025, if the employer sets up a broad-based IRC Section 127 educational assistance plan.
- ❑ Employers seeking to attract and retain employees may offer tuition assistance to future employees by providing forgivable loan agreements. When the loans are forgiven (typically after the student has become an employee for a specified period of time), the amount forgiven is taxable wages, subject to income and employment taxes (including the employer share of employment taxes).
- ❑ The CARES Act permitted employers to defer payment of the employer portion of Social Security (6.2%) payroll tax liabilities that would have been due from March 27 through December 31, 2020. Employers are reminded that the remaining balance of the deferred amount must be paid by December 31, 2022. Notice CP256-V is not required to make the required payment.
- ❑ Employers should ensure that common fringe benefits are properly included in employees' and, if applicable, 2% S corporation shareholders' taxable wages. Partners and LLC members (including owners of capital interests and profits interests) should not be issued W-2s.
- ❑ Publicly traded corporations may not deduct compensation of "covered employees" — CEO, CFO and generally the three next highest compensated executive officers — that exceeds \$1 million per year. Effective for taxable years beginning after December 31, 2026, the American Rescue Plan Act of 2021 expands covered employees to include five highest paid employees. Unlike the current rules, these five additional employees are not required to be officers.
- ❑ Generally, for calendar year accrual basis taxpayers, accrued bonuses must be fixed and determinable by year end and paid within 2.5 months of year end (by March 15, 2023) for the bonus to be deductible in 2022. However, the bonus compensation must be paid before the end of 2022 if it is paid by a Personal Service Corporation to an employee-owner, by an S corporation to any employee-shareholder, or by a C corporation to a direct or indirect majority owner.
- ❑ Businesses should assess the tax impacts of their mobile workforce. Potential impacts include the establishment of a corporate tax presence in the state or foreign country where the employee works; dual tax residency for the employee; additional taxable compensation for remote workers' travel to a work location that is determined to be personal commuting expense; and payroll tax, benefits, and transfer pricing issues.