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*In the early morning hours of July 28, 2017, members of the U.S. Senate voted 49-51 to reject a “skinny” version of a bill to repeal and replace the Affordable Care Act (ACA), called the Health Care Freedom Act. Because the Senate was unable to pass any ACA repeal or replacement bill, the ACA remains current law, and employers must continue to comply with all applicable ACA provisions.*

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## Possible Change to Overtime Rules

On May 2, 2017, the House of Representatives passed the Working Families Flexibility Act (also known as H.R. 1180). If approved, H.R. 1180 would authorize private employers to offer compensatory time off instead of overtime pay for nonexempt employees who work more than 40 hours per week. H.R. 1180 still needs approval from the Senate and the executive branch before it becomes law.



Compensatory time off is already a common practice for many federal and state employers, but it is not currently approved by the Fair Labor Standards Act (FLSA) for private employers. H.R. 1180 would amend the FLSA to allow this practice, if certain conditions are met.

H.R. 1180 is proposing that compensatory time off be calculated at the rate of 1.5 hours of compensatory time off for every hour of overtime work. As it stands, H.R. 1180 would expire within five years of its enactment. Additionally, the bill would limit the amount of compensatory time off to 160 hours for eligible employees.

H.R. 1180 would only apply to private sector employers, meaning that if it were to be adopted, it would not affect current compensatory time off requirements for public sector employees.

Under H.R. 1180, both employers and employees would have to agree to compensatory time off instead of overtime wages. Employers would not be permitted to directly or indirectly intimidate, threaten or coerce (or attempt to intimidate, threaten or coerce) employees to agree to receive or use any accrued compensatory time off.

Under H.R. 1180, employees would be eligible to receive compensatory time off after 1,000 hours of continuous employment during the previous 12 months.

In addition, H.R. 1180 would require employers to allow employees to use any earned compensatory time off within a reasonable period, as long as this does not unduly disrupt the employer's operations.

Employers would be required to provide monetary compensation to their employees for any compensatory time off that is not used by the end of the calendar year. However, employers would be able to determine a different 12-month period as long as it remains consistent.

Because H.R. 1180 is not yet law, no action steps are currently required of any employers. We will continue to monitor the progress of this bill through the legislative process and update you as more information becomes available. In the meantime, contact U.S. Employee Benefits Services Group for more information regarding the FLSA and overtime wage payment requirements.

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## ACA Affordability Percentages Decreasing in 2018

On May 5, 2017, the Internal Revenue Service (IRS) issued Revenue Procedure 2017-36 to index the contribution percentages in 2018 for purposes of determining affordability of an employer's plan under the Affordable Care Act (ACA).

For plan years beginning in 2018, employer-sponsored coverage will be considered affordable if the employee's required contribution for self-only coverage complies with the following:

- Does not exceed **9.56 percent** of the employee's household income for the year, for purposes of both the pay or play rules and premium tax credit eligibility
- Does not exceed **8.05 percent** of the employee's household income for the year, for purposes of an individual mandate exemption (adjusted under separate guidance)

This is the first time since these rules were implemented that the affordability contribution percentages have been reduced. As a result, some employers may need to reduce their employee contributions starting Jan. 1, 2018, to meet the adjusted percentage.

**Employer Shared Responsibility Rules:** The affordability of health coverage is a key point in determining whether an applicable large employer will be subject to a penalty. Employers may use an affordability safe harbor to measure affordability of their coverage. The three safe harbors measure affordability based on Form W-2 wages from that employer, the employee's rate of pay or the federal poverty line for a single individual.

The affordability test applies only to the portion of the annual premiums for self-only coverage, and does not include any additional cost for family coverage.

**Individual Mandate Exemption:** The ACA's individual mandate requires most individuals to obtain acceptable health coverage for themselves and their family members or pay a penalty. However,



individuals who lack access to affordable minimum essential coverage are exempt from the individual mandate.

This affordability contribution percentage was adjusted to **8.05 percent** for plan years beginning in 2015, **8.13 percent** for plan years beginning in 2016, **8.16 percent** for plan years beginning in 2017 and **8.05 percent** for plan years beginning in 2018.

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## Updated Form I-9 Required Beginning Sept. 18

On July 17, 2017, U.S. Citizenship and Immigration Services (USCIS), part of the U.S. Department of Homeland Security, issued an updated version of [Form I-9: Employment Eligibility Verification](#) (Form I-9). Under federal law, every employer that recruits, refers for a fee or hires an individual for employment in the United States must complete a Form I-9.

The updated form replaces a version that was issued in 2016. Employers may continue using the 2016 form until Sept. 17, 2017. Exclusive use of the updated form is expected by **Sept. 18, 2017**. The new form expires on Aug. 31, 2019.

The updated Form I-9 includes revisions to the instructions and to the list of acceptable documents, but does not include substantive revisions for completing the Form I-9. See the USCIS [website](#) for more information regarding USCIS or the new Form I-9.

The image shows the front page of Form I-9, 'Employment Eligibility Verification'. It is a document from the U.S. Department of Homeland Security, specifically from U.S. Citizenship and Immigration Services. The form is titled 'Form I-9' and includes a USCIS logo. It contains several sections: 'Section 1. Employee Information and Attestation' which includes fields for the employee's name, address, date of birth, and date of hire; and 'Section 2. Employer/Translator Certification' which includes fields for the employer's name, address, and date of certification. There are also checkboxes for 'I am a citizen of the United States' and 'I am authorized to work in the United States'. The form is numbered 'Form I-9 (08/2017)' and 'Page 1 of 2'.

For a complete list of changes, or for more information on how these changes might impact your organization, please contact a USEBSG office today. [www.usebsg.com](http://www.usebsg.com)

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