

2025 Annual Employee Benefits Compliance Checklist

General Counsel of Tax-Exempt & Governmental Entities

Considerations for General Counsel
of Tax-Exempt and Governmental Entities

The following checklist highlights key issues for general counsel with respect to employee benefit plans and executive compensation arrangements.

Amendments and Considerations for All Qualified Retirement Plans

- ☐ **Prudent Fiduciary Procedures:** Any entity sponsoring a retirement plan is a fiduciary of the plan and a co-fiduciary with other fiduciaries named in the plan, such as the plan administrator or the investment fiduciary. Best practice is for investment fiduciaries responsible for selecting and monitoring plan investments to meet on a regular basis (preferably, quarterly) to review the performance of such investments and the reasonableness of investment-related fees that are paid directly from plan assets. Minutes of such meetings recording the fiduciaries' decisions should be maintained. Such fiduciaries should report annually to the board or its delegate.

General counsel should determine that the applicable plan fiduciaries have met during the year, maintained minutes, and reported on their activities to the appropriate board, individual, or committee.

- ☐ **SECURE, SECURE 2.0 and CARES Act Amendments:** Amendments to conform to the SECURE Act of 2019 (SECURE Act), the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), and the SECURE 2.0 Act of 2022 (SECURE 2.0) **must be adopted by December 31, 2026, for qualified plans or by December 31, 2029, for governmental plans.** Plan administrators should carefully document changes implemented under the SECURE Act, CARES Act, and SECURE 2.0 so that amendments adopted later will accurately reflect administration.
- ☐ **SECURE 2.0 Act Changes Effective in 2025 and 2026:** Highlights of the SECURE 2.0 retirement plan provisions that became effective in 2025 and will become effective in 2026 include:
 - **Requiring newly established 401(k) and 403(b) plans to automatically enroll participants for plan years beginning after December 31, 2024 (ERISA-covered plans only).** The initial automatic enrollment amount must be at least 3% (but not more than 10%) of compensation, and automatic enrollment elections will be subject to an annual automatic escalation of 1% of compensation per year until contributions reach at least 10% (but not more than 15%) of compensation.
 - **Improving coverage for part-time employees (ERISA-covered plans only).** The SECURE Act required employers to allow long-term, part-time employees to make elective deferral contributions to the employers' 401(k) plans once the part-time employees have completed three consecutive years of service (where the employee completes at least 500 hours of service). The first group of such employees became eligible to make elective deferral contributions in plan years

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beginning after December 31, 2023. SECURE 2.0 reduced the three-year rule to two years, effective for plan years beginning after December 31, 2024.

- **Increased catch-up contribution limit for individuals ages 60 through 63 in 401(k), 403(b), and governmental 457(b) plans for plan years beginning after December 31, 2024.** Such limit is \$11,250 for 2025 and is indexed for inflation.
- **Requirement to provide paper statements for plan years beginning after December 31, 2025 (ERISA-covered plans only).** For defined contribution plans, paper benefit statements must be provided to participants at least once annually. For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every three years must be a paper statement.

- ☐ **Discretionary Plan Amendments:** Plan amendments reflecting discretionary changes that became effective in the current plan year (other than the SECURE Act, CARES Act, and SECURE 2.0 changes discussed above) must be **adopted by the last day of the plan year** (e.g., December 31, 2025, for a calendar year plan). Examples of discretionary changes include an increase in benefits, the addition of a new participating employer, and the addition of a new type of contribution. For defined benefit plans, advance participant notice may be required if an amendment significantly reduces the rate of future benefit accruals, such as a pension plan freeze.

Executive Compensation

- ☐ **For Tax-Exempt and Governmental Entities That Have Code section 457(f) Arrangements:** Such employers should review all employment agreements and Code section 457(f) arrangements for deferrals of compensation that vest in 2025 to confirm whether such amounts have been included in the employee's wages for 2025 and whether applicable FICA and income tax withholding occurred. If inclusion and withholding for any deferrals of compensation that vested in 2025 (or prior years) have not already occurred, action should be taken **by December 31, 2025**, in consultation with legal counsel.
- ☐ **For Deferred Compensation That Vests in 2026 or Later Years, Review and Correct any Code section 409A Violations:** Employers should review all nonqualified deferred compensation plans or agreements, under which compensation vests in 2026 or later years, to ensure that there are no Code section 409A violations. If employers identify the violation **before the end of 2025**, then documentary violations with respect to unvested amounts generally can be corrected by **December 31, 2025**, without penalties. Code section 409A corrections should correspond to methods described in formal guidance and should be reviewed by legal counsel.

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If you have any questions regarding this checklist, please contact any member of the Employee Benefits & Executive Compensation Section at Williams Mullen.

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