

# 2025 Annual Employee Benefits Compliance Checklist

## Corporate Counsel

### Considerations for Corporate Counsel

The following checklist highlights key issues for corporate 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 corporate board or its delegate.  
  
Corporate 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.** 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.*** 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.*** 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 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.

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- **Increased catch-up contribution limit for individuals ages 60 through 63 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.** 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.

### Stock-Based, Executive, and Director Compensation

- ☐ **ISO Exercises and ESPP Share Transfer Reporting:** Employers whose employees exercised an incentive stock option (ISO) in 2025 or made an initial transfer in 2025 of shares acquired under an employee stock purchase plan (ESPP) within the meaning of Code section 423, are subject to information reporting. Employers will report information to employees and the IRS relating to ISO exercises and initial transfers of ESPP shares on IRS Forms 3921 and 3922. The **IRS filing deadline is March 2, 2026** (paper filing), or **March 31, 2026** (electronic filing). Employers must **provide this year's employee statements by February 2, 2026**. Note that these filings apply to all companies offering ISOs or an ESPP, not just publicly traded employers.
- ☐ **FICA Taxation of Nonqualified Deferred Compensation Plans:** Nonqualified deferred compensation plans are subject to special rules on the timing of Federal Insurance Contributions Act (FICA) taxation. In general, amounts deferred are taken into account in the year those amounts are first vested, rather than at the time of payment. This rule often results in a smaller portion of the deferred benefit being subject to Social Security and (depending on plan design) Medicare taxes than would be the case if taxes were withheld and paid upon distribution. A number of factors affect the amount of compensation taken into account for a given year, and the proper year of taxation must be carefully assessed in the case of defined benefit-type nonqualified plans. Employers have until **December 31, 2025**, to withhold and pay FICA taxes on compensation deferrals that are subject to this rule in 2025.
- ☐ **Nonqualified Plan Deferral Elections for 2026 Compensation:** Elections to defer compensation earned in 2026 must be completed by **December 31, 2025**, absent very limited exceptions. If a company plans to rely on any exception to the December 31, 2025, deadline, legal counsel should be consulted before year end.

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- ☐ **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.
- ☐ **Identify 2026 Specified Employees Under Code section 409A:** Unless a different identification period has been elected, publicly traded employers must identify individuals who were specified employees in the 12-month period ending on **December 31, 2025**. Specified employee status for these individuals applies for the 12-month period beginning April 1, 2026. If an employer intends to change their specified employee determination and effective dates, legal counsel should be consulted.
- ☐ **Deduction Limits Under Code section 162(m):** Code section 162(m) limits the deductibility of compensation in excess of \$1 million paid to certain officers of a publicly traded employer. Changes to expand this limitation, the class of affected employees, and the allocation of deduction limits were made in 2017, 2021, and, most recently, in 2025 under the One Big Beautiful Bill Act. The 2025 changes, which replace the current affiliated group and deduction limitation allocation rules, apply for **tax years beginning after December 31, 2025**. Companies should evaluate the specific impact of these changes on a company's affiliate structure and covered employee list and consult with counsel as needed.
- ☐ **Evaluate Remaining Share Reserve and Expiration Date for Equity Plans:** A publicly traded company should determine whether the remaining share reserve under its equity compensation plans is sufficient for grants planned through 2026 and, ideally, 2027. If not, the company should begin preparing now for share increase and other amendments that may be necessary or desirable. Share increases and certain other changes are required to be approved by shareholders under New York Stock Exchange and Nasdaq Stock Market listing requirements and under tax rules relating to ISOs, where ISOs are offered under a plan. The company should consider both the timing of its annual meeting and its regular grant schedule as part of this planning. Similarly, steps should be taken to adopt and obtain approval of a plan amendment or new plan, as applicable, for plans expiring in 2026 or 2027, if continued operation of the program is desired.

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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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