

Compensation and Benefits Insights

DECEMBER 2017

Tax Cuts and Jobs Act: Changes to Executive Compensation and Employee Benefits

Authors, *Laura Westfall*, New York, + 212 556 2263, lwestfall@kslaw.com, *Donna Edwards*, Atlanta, +1 404 572 2701, dedwards@kslaw.com, *Ryan Gorman*, Atlanta, + 1 404 572 4609, rgorman@kslaw.com, *Mark Kelly*, Atlanta, + 1 404 572 2755, mkelly@kslaw.com

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act, which was passed by both chambers of Congress on December 20, 2017 (the “Act”). As described below, a number of provisions of the Act affect executive compensation and employee benefit matters. Unless otherwise indicated below, changes are effective for tax years beginning after 2017. In future alerts, King & Spalding will provide further analysis of the most impactful provisions.

Changes to Executive Compensation:

- **Changes to the Code Section 162(m) Compensation Deduction Rules:** Under prior law, Section 162(m) of the Internal Revenue Code of 1986, as amended (“Code”) provided that a “publicly-held corporation” generally may not deduct compensation of more than \$1 million that is paid to certain “covered employees” unless the compensation is “qualified performance-based compensation” or certain commissions. Under the Act, Code Section 162(m) has been amended in several respects:
 1. The exceptions to the \$1 million compensation deduction limit for qualified performance-based compensation and commissions have been eliminated;
 2. The definition of “covered employee” has been expanded to include the company’s principal financial officer (as well as the company’s principal executive officer) and anyone who served in either capacity

Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan “stock drop” cases and other breach-of-fiduciary-duty class actions.

Contact

Kenneth A. Raskin
Chair of the Employee Benefits & Executive Compensation Practice
New York
+1 212 556 2162
kraskin@kslaw.com

Compensation and Benefits Insights

during the tax year, and provides that once an individual qualifies as a covered employee for a tax year beginning after 2016, the deduction limit continues to apply to that individual as long as the company provides compensation (including post-employment and post-death payments) to that individual; and

3. The definition of “publicly-held corporation” has been expanded to include any company issuing securities that are required to file reports under Section 15(d) of the Securities Exchange Act, such as companies who issue publicly-traded debt instruments.

The changes to Code Section 162(m) under the Act apply to tax years beginning after 2017 (and to covered employees in any tax year after 2016, as described above), but the Act includes a transition rule under which these changes do not apply to compensation provided under a written binding contract that was in effect on, and not modified in any material respect on or after, November 2, 2017.

- **New Tax-Exempt Employer Excise Tax:** The Act includes a provision that imposes a new 21% excise tax on certain compensation paid by “applicable tax-exempt organizations.”
 1. A 21% excise tax is imposed on compensation paid by an applicable tax-exempt organization in excess of \$1 million to its five highest-paid employees for the tax year. An employee who was a covered employee for any tax year beginning after 2016 continues to be a covered employee in subsequent years for purposes of the new excise tax, even if the individual is no longer in the top-paid group.
 2. In addition, certain “excess parachute payments,” or payments to employees that are contingent on their separation from employment with the employer and that equal or exceed an amount that is three times the employee’s base compensation (as determined under rules similar to Code Section 280G), are also subject to the 21% excise tax under the Act. If applicable, the 21% excise tax would apply to amounts in excess of one times the employee’s base compensation.
 3. “Compensation” subject to the \$1 million limit is defined to include all “wages” (within the meaning of the tax withholding rules) with respect to the employment of such employee by the employer or a related organization, and includes amounts required to be included in income under Code Section 457(f) at the time there is no substantial risk of forfeiture.
 4. Compensation attributable to the performance of medical services by a licensed medical professional (including a veterinarian) is excluded from the definition of compensation subject to the \$1 million limit and the definition of parachute payment under the Act. In addition, payments made to an individual who is not a “highly compensated employee” as defined in Code Section 414(q) are excluded from the definition of parachute payment under the Act.
 5. The Act defines an “applicable tax-exempt organization” as any organization which for the tax year is exempt from tax under Code Section 501(a), is a farmers’ cooperative organization described in Code Section 521(b)(1), has income excluded from tax under Code Section 115(1), or is a political organization described in Code Section 527(e)(1).

Compensation and Benefits Insights

- **New Provision for Qualified Equity Grants:** The Act includes a provision allowing a private company to offer its rank and file employees the opportunity to elect to defer income tax inclusion on certain compensatory stock options and restricted stock units (“RSUs”) (together, the “qualified equity grants”) for up to five years. In order for the employees to qualify for this deferral, the company must have a written plan under which at least 80% of all employees providing services to the company in the U.S. (or any U.S. possession) are granted stock options or RSUs (in more than a de minimis amount), with the same rights and privileges in a calendar year. This 80% requirement cannot be satisfied by the employer granting a combination of stock options and RSUs; instead, the employer must grant either all stock options or all RSUs for the year. An employer offering qualified equity grants is subject to certain reporting and notice requirements and penalties for failure to comply. This deferral opportunity is not available to any individual who is a 1% owner at any time during the calendar year (or who was a 1% owner at any time during the 10 preceding calendar years), current or former chief executive officers or chief financial officers (including their family members), or certain highly compensated officers. This provision applies to stock attributable to options exercised or RSUs settled after 2017.

Changes to Qualified Retirement Plans and Individual Retirement Accounts (“IRAs”):

- **Qualified Plan Loans/Rollover Upon Termination of Employment or Plan Termination:** Previously, where an individual had an outstanding plan loan, upon termination of employment or termination of a qualified plan, the loan balance would be treated as a taxable distribution if the loan has not been paid and the individual did not roll over his/her loan balance to an IRA or another qualified plan within 60 days. Under the Act, an individual has until the due date for the individual’s tax return for the year of termination (including extensions) to roll over his/her loan balance to an IRA or other qualified plan.
- **Re-characterization of Roth IRA Conversions:** Previously, individuals were permitted to convert funds in their traditional IRA into a post-tax Roth IRA and, at a later date (no later than October 15th of the year following the conversion), re-characterize or “unwind” the conversion. The Act provides that once funds from a traditional IRA have been converted to a Roth IRA, the transaction may not be reversed.

ACA-Related Changes:

- **ACA Individual Mandate:** The Affordable Care Act (ACA) required individuals to maintain qualifying health coverage or pay a tax penalty for the months that the individual did not have health coverage; for 2017, the penalty was the greater of \$695 or 2% of income, and the penalty was the greater of \$2,085 or 2.5% of income for a family. Although the Act does not repeal the ACA’s individual mandate, it reduces the penalty for not having coverage to \$0, effective for months beginning after December 31, 2018. As a result, the individual mandate will still apply for the 2018 tax year, but the penalty will be reduced to \$0 beginning on January 1, 2019. The Act did not make any changes to the ACA’s employer shared responsibility rules, however, which will continue to apply to most large employers.

Compensation and Benefits Insights

Changes to Fringe Benefits and Other Miscellaneous Provisions:

- **Employer credit for paid family and medical leave:** The Act permits eligible employers (employers that allow all qualifying full-time employees at least two weeks annual paid family and medical leave and allow part-time employees a commensurate amount of leave on a pro rata basis) to claim a business credit equal to 12.5% of the wages paid to qualifying employees during the period such employees are on family and medical leave, if the payment rate under the program is 50% of the wages normally paid to such an employee. The credit is increased by 0.25 percentage points (but not above 25%) for each percentage point by which the rate of payment exceeds 50%. The credit is available during 2018 and 2019 only.
- **Qualified bicycle commuting reimbursement:** Previously, qualified bicycle commuting reimbursements of up to \$20 per month were excludible from an employee's gross income. The Act suspends the exclusion of qualified bicycle commuting reimbursements for taxable years beginning after December 31, 2017 and before January 1, 2026.
- **Length of service awards for public safety volunteers:** Previously, a plan maintained by a state or local government or a tax-exempt entity that solely provides length of service awards to bona fide volunteers or their beneficiaries, on account of qualified services performed by the volunteers, is not treated as a plan of deferred compensation for purposes of Section 457 of the Code. This exception applies only if the aggregate amount of length of service awards accruing for a bona fide volunteer with respect to any year of service does not exceed \$3,000. Beginning after December 31, 2017, the Act increases the aggregate amount of length of service awards that can accrue with respect to any year of service from \$3,000 to \$6,000, subject to adjustment for inflation.
- **Employee achievement awards:** Employee achievement awards are excluded from employees' income and are deductible by the employer to the extent such awards consist of tangible personal property given in recognition of the employee's length of service or safety achievement and presented as part of a meaningful presentation. The Act codifies the definition of "tangible personal property" to exclude cash, cash equivalents, gift coupons or certificates, as well as vacations, meals, lodging, or tickets to theater or sporting events, stocks, bonds, securities and other similar items. The change applies to amounts paid or incurred after December 31, 2017.
- **Expanded use of Section 529 accounts:** Previously, funds in a Section 529 college savings account could only be used to pay "qualified higher education expenses" at post-secondary educational institutions. The Act expands the definition of qualified higher education expenses to permit the payment of tuition at an elementary or secondary public, private, or religious school, up to \$10,000 per tax year. This change applies to distributions after December 31, 2017. In addition, rollovers from a Section 529 account to an ABLE account (a tax-favored savings program intended to benefit disabled individuals) are permitted through December 31, 2025, if the account is owned by the designated beneficiary of the Section 529 account or a member of his or her family.
- **Moving expense reimbursement and deduction:** Previously, qualified moving expense reimbursements provided by an employer to an employee were excluded from the employee's income. In addition, an employee could claim a deduction for certain moving expenses incurred in connection with starting a new job, regardless of whether or not the taxpayer itemized his deductions. For tax years beginning after December 31, 2017, and before

Compensation and Benefits Insights

January 1, 2026, the Act (i) suspends the exclusion from gross income for employer-provided qualified moving expense reimbursements and (ii) suspends the deduction for moving expenses. However, both the exclusion from gross income for employer-provided qualified moving expense reimbursements and the deduction for certain moving expenses remain available for active duty members of the Armed Forces who move pursuant to a military order and incident to a permanent change of station.

- **Unrelated business taxable income:** Previously, (i) certain fringe benefits (transportation benefits, qualified parking benefits, and access to on-site athletic facilities) provided to employees of an exempt organization were not treated as unrelated business taxable income (“UBTI”), and (ii) an exempt organization that carried on more than one unrelated trade or business could calculate its UBTI on an aggregate basis, which allowed the organization to use a deduction generated by one trade or business to offset income earned by another. Beginning after December 31, 2017, the Act requires that (i) certain fringe benefit expenses for which a deduction is disallowed must be included in an exempt organization’s UBTI, and (ii) organizations with multiple unrelated trades or businesses must separately calculate UBTI for each trade or business.

King & Spalding would be happy to assist you with any questions you have about the Act.

2018 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

Author, *Ryan Gorman*, Atlanta, +1 404 572 4609, rgorman@kslaw.com

Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for 2018. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is generally delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
January 31	IRS Form 945	Deadline for employer to file IRS Form 945 to report income tax withheld from qualified plan distributions made during the prior plan year. However, the deadline may be extended to February 12 if taxes were timely deposited during the prior plan year.	Qualified Retirement Plans*
	IRS Form 1099-R	Deadline for employer to distribute IRS Form 1099-R to participants and beneficiaries who received a distribution (including a direct rollover) during the prior plan year. This includes a direct rollover from a Qualified Retirement Plan.	Qualified Retirement Plans
	IRS Form W-2	Deadline for employers to distribute Form W-2, which must reflect aggregate value of employer-provided employee benefits (e.g., cost of coverage, imputed income for group-term life insurance, employer Health Savings Account contributions, etc.).	Health and Welfare Plans
February 14 (within 45 days after the close of the fourth quarter of previous plan year)	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the fourth quarter of the previous plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	Defined Contribution Plans that allow participants to direct investments
	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send fourth quarter benefit statement for previous plan year to participants in participant-directed defined contribution plans.	
February 28 (if filing paper forms)	IRS Form 1099-R	Deadline for employer to file IRS Form 1099-R. If the form is filed electronically, the deadline can be extended until March 31.	Qualified Retirement Plans

* Qualified Retirement Plans include all defined benefit and defined contribution plans that are intended to satisfy Internal Revenue Code §401(a).

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	IRS Form 1094-B Transmittal Forms	Deadline for providers of minimum essential coverage to transmit forms to IRS reporting the months during the year that individuals enrolled in the group health plan satisfied the individual mandate by enrolling in minimum essential coverage. If the form is filed electronically, the deadline can be extended until March 31.	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1094-C Transmittal Forms	Deadline for plan sponsors that employed an average of at least 50 full-time employees in 2017 (also known as “Applicable Large Employers” or “ALEs”) to transmit forms to IRS reporting whether the ALEs offered an opportunity to enroll in (and whether employees did enroll in) minimum essential coverage under the ALE’s sponsored plan. If the form is filed electronically, the deadline can be extended until March 31.	Applicable Large Employers
March 1 (60 days after the beginning of the plan year)	Medicare Part D Creditable Coverage Disclosure	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to disclose to the Centers for Medicaid and Medicare Services (CMS) whether the coverage is “creditable prescription drug coverage” by completing the Online Disclosure to CMS Form at https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html	Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals
March 2	IRS Form 1095-B Individual Statements	Deadline for providers of minimum essential coverage to distribute forms used to report to responsible individuals the months during the year that the individuals satisfied the individual mandate by enrolling in minimum essential coverage. This deadline was extended from its original deadline of January 31. Note that self-insured ALEs can report this information on Form 1095-C. Fully insured plan sponsors that are not ALEs are not required to distribute Form 1095-B, which are distributed by the group health plan insurers.	Self-Insured Group Health Plans and Group Health Plan Insurers

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	IRS Form 1095-C Individual Statements	Deadline for ALEs to report to provide a written statement to employees indicating whether the ALEs offered an opportunity to enroll in (and whether the employee did enroll in) minimum essential coverage under the ALE's sponsored plan. This deadline was extended from its original deadline of January 31.	Applicable Large Employers
March 15	Plan Contribution Deadline	Deadline for corporate employer contributions to be made to plan trusts in order for such amounts to be deductible on corporate tax returns (assuming the employer is operating on a calendar-year fiscal year). Note that this deadline may be extended if an extension is obtained for the corporate tax return.	Qualified Retirement Plans
March 15 (2 ½ months after the plan year)	Excess Contributions	Deadline for plan administrator to distribute any excess contributions and earnings from the prior year to avoid 10% excise tax on employer (other than eligible automatic contribution arrangements (EACAs)).	401(k) Plans Other Than EACAs
March 31 (last day of 3rd month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is 10 points less than prior year AFTAP.	Defined Benefit Plans
March 31 (if filing electronically)	IRS Form 1094-B Transmittal Forms	Deadline for providers of minimum essential coverage to transmit forms to IRS reporting the months during the year that individuals enrolled in the group health plan satisfied the individual mandate by enrolling in minimum essential coverage.	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1094-C Transmittal Forms	Deadline for ALEs to transmit forms to IRS reporting whether the ALEs offered an opportunity to enroll in (and whether employees did enroll in) minimum essential coverage under the ALE's sponsored plan.	Applicable Large Employers

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
April 1	Age 70 ½ Distribution Requirements	Deadline for plan administrator to distribute prior year's required minimum distribution for any terminated employee who reached age 70 ½ or older during the prior year.	Qualified Retirement Plans
April 15	Excess Deferrals	Deadline for plan to distribute prior year's deferrals in excess of Internal Revenue Code (IRC) §402(g) annual dollar limit and related earnings.	401(k) Plans
April 16 (105 days after the end of the plan year)	PBGC 4010 Filing	Deadline for contributing sponsors (and each controlled group member) to file PBGC Form 4010 if: 1) Any single-employer plan in the contributing sponsor's controlled group had a prior year AFTAP of less than 80%; 2) Any single-employer plan in the contributing sponsor's controlled group fails to make a required installment or other required payments to a plan, and as a result, a lien is imposed pursuant to ERISA section 303(k)(1) or IRC section 430(k)(1); or 3) The IRS has granted funding waivers of more than \$1 million to any single-employer plan in the contributing sponsor's controlled group and any portion of such waiver is still outstanding.	Defined Benefit Plans
April 30 (no later than 120 days after the end of the plan year)	Annual Funding Notice	Deadline for the plan administrator to provide a plan funding notice to the PBGC, to each plan participant and beneficiary and to each employer that has an obligation to contribute under the plan.	Defined Benefit Plans
May 15 (within 45 days after the close of the first quarter of plan year)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the first quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans that allow participants to direct investments

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the first quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
May 15 (the 15 th day of the 5 th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year. A 3-month extension may be obtained by filing a Form 8868, which must be filed by this date.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations
June 30 (last day of 6 th month following the plan year)	Excess Contributions	Deadline for plan administrator to distribute EACA excess contributions and earnings from the prior year to avoid 10% excise tax.	401(k) Plans with EACA
July 29 (no later than 210 days after the end of the plan year in which the change was effective)	Summary of Material Modifications	Deadline for plan administrator to distribute summary of material modifications reflecting any changes to the summary plan description (SPD) arising from any plan amendments adopted during prior year (unless a revised SPD is distributed that contains the modification).	Retirement Plans Health & Welfare Plans
July 31 (the last day of the 7 th month following the	DOL Form 5500	Deadline for plan administrator to file Form 5500 (Annual Return/Report of Employee Benefit Plan) for prior year. This deadline is extended 2 ½ months if the plan administrator files Form 5558.	Retirement Plans Health and Welfare Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
plan year)	IRS Form 8955-SSA	Deadline for plan administrator to file Form 8955-SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits). This deadline is extended by 2 ½ months if the plan administrator files a Form 5558.	Retirement Plans
July 31	Patient Centered Outcomes Research Institute (PCORI) Fee	Deadline for self-insured health plans to pay a fee for 2017 plan year using IRS Form 720. Note that the fee is not tax deductible. Insurers are responsible for paying the fee on behalf of insured plans.	Self-Insured Group Health Plans (including retiree plans)
August 14 (within 45 days after the close of the second quarter of plan year)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the second quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans with participant-directed investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the second quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
August 15 (the 15 th day of the 8 th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year if the trustee obtained a 3-month extension by filing a Form 8868.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
September 15 (8 ½ months after the end of the plan year)	Minimum Contribution Deadline	Deadline for plan administrator to contribute balance of minimum contributions necessary to avoid a funding deficiency.	Defined Benefit Plans
September 30 (within 9 months of the end of the plan year)	Summary Annual Report (SAR)	Deadline for plan administrator to distribute Summary Annual Report for prior year to participants and beneficiaries. This deadline may be extended until 2 months following the close of the extension period for filing a Form 5500, if applicable.	Defined Contribution Plans Health and Welfare Plans (unfunded welfare plans are exempt)
September 30 (last day of the 9th month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is less than 60%.	Defined Benefit Plans
October 15	Medicare Part D Creditable Coverage Notice to Individuals	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to provide a written disclosure notice to Medicare eligible individuals and their dependents covered under the plan indicating whether their prescription drug coverage is creditable coverage.	Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals
October 15 (2 ½ months after extension granted)	DOL Form 5500	Deadline for plan administrator to file Form 5500 for prior year if deadline was extended by filing a Form 5558.	Retirement Plans Health and Welfare Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	IRS Form 8955-SSA	Deadline for plan administrator to File Form 8955-SSA if deadline was extended by filing a Form 5558.	Retirement Plans
October 15 (9 ½ months after the previous plan year)	PBGC Premium Filing	Deadline for plan administrator to pay flat-rate or variable PBGC premium for current plan year.	Defined Benefit Plans
November 1 (by the first day of open enrollment)	Summary of Benefits and Coverage for Health Plans that Require Reapplication	Deadline for group health plan administrator (for self-insured plans) or group health plan administrator or insurer (for fully insured plans) to provide a Summary of Benefits Coverage (SBC) if written application materials are required for renewal.	Group Health Plans and Health Insurance Issuers
November 14 (within 45 days after the close of the third quarter)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the third quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans with participant-directed investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the third quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
November 15 (the 15 th day of the 11 th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year if the trustee obtained a second 3-month extension by filing a Form 8868.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
December 1 (at least 30 but no more than 90 days before the beginning of the plan year)	Safe Harbor Notice	Deadline for plan administrator to distribute a notice of intent to use a safe harbor formula to participants and beneficiaries. This notice must be provided within a reasonable period of time before the beginning of the plan year. The regulations provide a safe harbor of not less than 30 days but not more than 90 days before the beginning of the plan year.	401(k) and 401(m) Plans
	Contingent Safe Harbor Notice	Deadline for plan administrator to distribute a notice to participants and beneficiaries specifying that the plan may be amended during the following plan year to include a 3% employer non-elective safe harbor contribution.	401(k) and 401(m) Plans
	Auto-Enrollment Notice	Deadline for plan administrator to provide annual auto-enrollment notice for plans with qualified automatic contribution arrangements (QACA) or eligible automatic contribution arrangements (EACA). This notice must be provided sufficiently early so that the employee has a reasonable period of time after receipt to make QACA or EACA elections. The preamble to the regulations notes that this timing requirement is deemed to be satisfied if the notice is given at least 30 days but not more than 90 days before the beginning of each plan year.	401(k) Plans with QACA or EACA
December 1 (at least 30 days before the end of the plan year)	Qualified Default Investment Alternative (QDIA) Annual Notice	Deadline for plan administrator to provide annual QDIA notice to participants or beneficiaries.	Defined Contribution Plans with participant-directed investments

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	Safe Harbor Follow-Up Notice	Deadline for plan administrator to distribute a notice to participants and beneficiaries informing them that the 3% employer non-elective safe harbor contribution will be made for the current plan year. This notice may be combined with the Contingent Safe Harbor Notice for the following plan year.	401(k) and 401(m) Plans
December 1 (at least 30 days prior to the first day of the new plan or policy year)	Summary of Benefits and Coverage for Health Plans that Automatically Renew Coverage	Deadline for group health plan administrator (for self-insured plans) or group health plan administrator or insurer (for fully insured plans) to provide a Summary of Benefits Coverage (SBC) if coverage automatically renews each year.	Group Health Plans and Health Insurance Issuers
December 1 (no later than 30 days before participant becomes eligible to diversify employer stock)	Diversification Notice	Deadline for plan administrator to provide diversification notice to participants who will first be eligible to divest employer securities on January 1.	Defined Contribution Plans with participant-directed investments in employer stock
December 15 (2 months after the extension for filing Form 5500)	Summary Annual Report (SAR)	Deadline for plan administrator to distribute SAR for prior year to participants and beneficiaries, if the IRS granted a 2-month extension for Form 5500 on or before the original Form 5500 deadline.	Defined Contribution Plans
December 31 (last day of plan year following plan year for which contributions were made)	Correction of Excess Contributions & Excess Aggregate Contributions	Deadline for plan administrator to make corrective employer contributions or distribute excess contributions (ADP test failure) and excess aggregate contributions (ACP test failure) for the prior year.	401(k) and 401(m) Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
December 31 (last day of plan year)	Discretionary Amendments	Deadline for plan sponsor to adopt discretionary plan amendments for calendar-year plans.	Qualified Retirement Plans
	Adjusted Funding Target Attainment Percentage (AFTAP) Certification	Deadline for actuary to certify a specific AFTAP if a range certification was previously issued.	Defined Benefit Plans
December 31 (at least annually)	ERISA §404(c) Disclosures	Deadline for plan administrator to distribute notices to participants and beneficiaries if the employer wants to limit fiduciary liability for participant-directed investment decisions.	Defined Contribution Plans with participant-directed investments
	Annual Fee Disclosure to Participants	Deadline for plan administrator to make annual disclosure of certain fees for participant directed individual account plans to be provided to participants and beneficiaries.	
	Pension Benefit Statements	Deadline for plan administrator of a defined benefit plan using alternative notice for pension benefit statements to notify participants of availability of a pension benefit statement and instructions on how to obtain it.	Defined Benefit Plans
December 31 (at least annually as a part of any yearly informational packet)	WHCRA Notice	Deadline for group health plans to distribute Women's Health and Cancer Rights Act (WHCRA) notice for new plan year to all participants and beneficiaries advising them of available mastectomy benefits under WHCRA and any deductibles and co-insurance limits applicable to such benefits.	Health and Welfare Plans
	Children's Health Insurance Program Reauthorization Act (CHIPRA) Notice	Deadline for employer to notify employees of potential opportunities for premium assistance from the state in which the employee resides.	Group Health Plans in states that provide premium assistance under Medicaid or CHIP

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	Wellness Program Notice	Although no specific deadline is provided, the notice must be provided before employees provide any health information for the program and with enough time to decide whether to participate in the program.	Group Health Plans offering wellness programs
December 31	Required Minimum Distributions	Deadline for plan administrator to distribute current year's required minimum distributions under IRC §401(a)(9).	Qualified Retirement Plans