EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

Employee Benefits Newsletter

December 2024

Services

Employee Benefits and Executive Compensation

Fiduciary Duties and Governance

Qualified Retirement Plans

Taft-Hartley Plans

Health and Welfare Plans

Government Plans

Higher Education

Employee Stock Ownership Programs (ESOPs)

Executive Compensation and Nonqualified Plans

ERISA and Benefits Litigation

College Savings and ABLE Plans

Mandatory Paid and Unpaid Leave

Audits and Investigations

Public Employers May Want to Review Long-Term Plans in Preparation for Expansion of "Covered Employees" Under Code Section 162(m)

Section 162(m) of the Internal Revenue Code provides that public companies may not take a tax deduction for certain employee compensation in excess of $1 million during the company's taxable year. This restriction applies only to compensation paid to "Covered Employees," and that classification is set to expand for tax years after December 31, 2026.

Currently, the definition of "Covered Employees" generally includes only the company's named executive officers. However, for tax years beginning on or after January 1, 2027, the definition will expand to include the next five highest-compensated employees. Although this expanded definition does not go into effect for several years, public companies should still begin planning now for this expansion in relation to long-term incentive awards. Specifically, companies may want to consider structuring these awards to vest prior to the application of the expanded definition for individuals who could be covered under the expansion, thus avoiding the lost tax deduction.

If you have questions about who qualifies as a Covered Employee or other executive compensation matters, contact a member of our Employee Benefits and Executive Compensation group.

This Employee Benefits Newsletter is a publication of Kutak Rock LLP. This publication is intended to notify our clients and friends of current events and provide general information about employee benefits issues. This Employee Benefits Newsletter is not intended, nor should it be used, as specific legal advice, and it does not create an attorney-client relationship. This communication could be considered advertising in some jurisdictions. The choice of a lawyer is an important decision and should not be based solely upon advertisements.

©Kutak Rock LLP 2025– All Rights Reserved