Summary of Key OBBBA Rules on Compensation and Employee Benefits

Topic	Description		Next Steps/Commentary	Effective Date
	Prior Rule	New Rule		
EXECUTIVE AND EQUITY COMPENSATION				
Limit on Compensation Deduction for Publicly Held Corporation – Code Section 162(m)	Code Section 162(m) limits the compensation deduction that a publicly held corporation may take for compensation paid to covered employees[1] to $1 million per covered employee for the taxable year. The final regulations, released in 1995, incorporate the Code Section 1504 affiliated group aggregation rules (without regard to Code Section 1504(b))[2] for purposes of determining the compensation paid to covered employees and apportioning any amount disallowed as a deduction among members of the affiliated group.	All members of a "controlled group" are considered to be publicly held if any member of the controlled group is publicly held. A "controlled group" means a group of entities that would be treated as a single employer under Code Section 414(b), (c), (m) or (o). This is the same controlled group determination that applies to retirement plans and is significantly broader than an "aggregated group." All payments made to a covered employee by any member of the controlled group are aggregated for purposes of determining whether compensation exceeds the $1 million deduction limit. Any amount disallowed as a deduction under Section 162(m)	Public companies should: • determine which entities will be part of the controlled group and identify covered employees; • ensure payroll and accounting systems capture compensation paid by each member of the controlled group so the allocable limitation amount can be calculated accurately; • implement procedures to pro-rate the $1 million cap among members of the controlled group in proportion to the amount of compensation paid to the covered employee by the controlled group member; and	Tax years beginning after December 31, 2025.

1 "Covered employees" are the publicly held corporation's (i) CEO, (ii) CFO, (iii) employees whose compensation must be reported to shareholders as the top three paid employees other than the CEO and CFO, (iv) in the case of tax years beginning after December 31, 2026, the top five paid employees not counting the employees in (i) or (ii), and (v) any employee who was a covered employee under (i) or (ii) during a preceding tax year.

2 Code Section 1504 defines an affiliated group of corporations for purpose of allowing such corporations to file a consolidated income tax return. Code Section 1504 is much narrower than the controlled group rules that apply to qualified plans under Code Section 414(b), (c), (m) and (o).

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		must be prorated among the members of the controlled group based on the ratio of compensation paid by each member to the total compensation paid by all members to the covered employee.	• coordinate with the upcoming American Rescue Plan Act (ARPA) amendments to Section 162(m), which become effective for tax years after December 31, 2026.[3]	
Excess Compensation for Tax-Exempt Organizations – Code Section 4960	A 21% excise tax on tax-exempt organization excess executive compensation applied to amounts paid in any taxable year exceeding $1 million, plus any "excess parachute payments" (if applicable), to the top five highest-compensated employees of a tax-exempt organization (i.e., "covered employees").	"Covered employees" now includes any current or former employee of a tax-exempt organization.	Tax-exempt organizations should assess compensation arrangements across all roles, not just senior leadership, and pay close attention to deferred compensation, severance and vesting of compensation and benefits that could unexpectedly push total pay above the $1 million threshold.	Tax years beginning after December 31, 2025.
Incentive Stock Options (ISOs): Impact of Alternative Minimum Tax (AMT)	Under the Tax Cuts and Jobs Act (TCJA), AMT income (AMTI) exemption amounts were increased significantly: • $137,000 for joint filers • $88,100 for single filers Exemption phase-out thresholds were also increased: • $1,252,700 for joint filers	The OBBBA continues the higher AMTI exemption limits but accelerates the phase-out for high income earners as follows: • The AMTI exemption phase-out starting point is reduced to $1 million (joint filers) and $500,000 (single filers). The phase-out calculation rises to $0.50 for every $1.00 of AMTI over	When an employee exercises an ISO, there is no direct reporting for ordinary income tax purposes but the value of the stock above the exercise price (the "spread") is an adjustment for AMT purposes. Employees with higher incomes and/or significant built-in "spread" value may want to	Tax years beginning after December 31, 2025.

3 Additional information regarding the changes introduced by ARPA is available in our Client Alert here.

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<tr><th rowspan="2">Topic</th><th colspan="2">Description</th><th rowspan="2">Next Steps/Commentary</th><th rowspan="2">Effective Date</th></tr>
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<tr><td></td><td>• $626,350 for single filers
The phase-out calculation applies to every $0.25 for each $1.00 over the threshold.
(Above represents 2025 inflation-adjusted amounts.)
The TCJA changes to AMT were scheduled to sunset at the end of 2025.</td><td>the thresholds, meaning faster erosion of the exemption.</td><td>consider exercising ISOs in 2025 to reduce AMT liability.</td><td></td></tr>
<tr><td>Qualified Small Business Stock (QSBS)[4]</td><td>Tiered gain exclusion based on holding period:
100% for stock acquired after September 27, 2010.
Cap on gain exclusion:
Greater of $10 million ($5 million for married taxpayers filing separately) or 10x taxpayer’s tax basis in the QSBS.
Gross assets limit:
$50 million</td><td>Tiered gain exclusion based on holding period:
• 50% for stock held for at least three years;
• 75% for stock held for at least four years; and
• 100% for stock held for five years or more.
Cap on gain exclusion:
Greater of $15 million ($7.5 million for married taxpayers filing separately), adjusted for inflation beginning in 2027, or 10x taxpayer’s tax basis in the QSBS.
Gross assets limit:
$75 million (adjusted for inflation beginning in 2027).</td><td>Startup companies should take note of proposed changes to QSBS, as it further enhances the appeal of stock-based compensation (e.g., restricted stock, early-exercise options) for recruitment and retention.
The higher gross asset limit means more startup companies will qualify to issue QSBS.
Startups should be deliberate in entity choice (must be a C corporation to issue QSBS) and ensure that business activities, asset thresholds and stock issuances meet QSBS requirements.</td><td>Applies to stock acquired after July 4, 2025.</td></tr>
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[4] Additional information regarding the changes to QSBS under the OBBBA is available in our Client Alert here.

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Tax-Qualified Stock Grants for Private Companies – Section 83(i)	The TCJA introduced Section 83(i)—a provision of the Code that allows eligible employees in a privately held company to elect to defer taxes on the exercise of a nonqualified stock option or vesting of a restricted stock unit for up to five years as long as the company and the equity awards meet certain conditions.	No changes under the OBBBA.	Section 83(i) was intended to address a legitimate concern—— employees being taxed on illiquid equity before they can monetize it. However, it has failed in execution due to narrow applicability, impractical compliance burdens and misalignment with the needs of private companies. As a result, it has seen virtually no adoption. Unfortunately, the OBBBA failed to address Section 83(i)'s substantial shortcomings.	N/A
PAYROLL[5]				
No Tax on Overtime	Overtime pay is fully taxable and subject to the same employer tax reporting and withholding obligations as other wages. Overtime pay is reported on Form W-2, but not separately identified, and employees are not entitled to any tax deduction for overtime pay.	New rules regarding taxation and reporting of overtime pay—specifically, the portion paid in excess of the regular rate—that is mandated by the federal Fair Labor Standards Act (FLSA premium pay) now apply.[6] Overtime pay remains subject to standard tax withholdings for	Employers should take the following actions: • Review and confirm which overtime pay qualifies as FLSA premium pay; • If an employer has employees in a state with overtime laws that require more overtime than the federal FLSA, for	Applies to wage payments made on or after January 1, 2025, through December 31, 2028.

[5] The OBBBA also addresses the taxation of tips. This summary does not include a discussion on the new rules for tips, but both the new rules for overtime and for tips will be addressed in a forthcoming Client Alert by Pillsbury's Employment and Labor Group.

[6] These new rules apply only to overtime pay required under the federal FLSA and not to, for example, overtime required by state law or more generous premiums paid by employers.

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		wages. However, employers must separately report the FLSA premium pay portion on employees' Form W-2 (likely in a new field). The IRS may issue a new tax-withholding formula specific to FLSA premium pay (which is currently calculated as 0.5 x the employee's regular rate of pay); until then, the regular withholding formulas apply.[7] If employers have not tracked the FLSA portion of overtime in 2025, they may reasonably "approximate" the amount. IRS guidance is expected on what qualifies as reasonable. When filing their personal income tax returns, employees may claim a deduction for FLSA premium pay up to \$12,500 (single filers) or \$25,000 (joint filers). Deduction phases out for adjusted gross incomes above	those employees, ensure that only the FLSA-mandated portion (i.e., 50% above the regular rate for hours worked above 40 hours in a single week of work) is reported as FLSA premium pay; • If an employer pays overtime at higher rates (e.g., double time or other contractual premiums), ensure that only the FLSA-mandated portion is reported as FLSA premium pay; • Ensure that their payroll systems can isolate FLSA premium pay and report it separately on Form W-2; • If employers are unable to track FLSA overtime paid in 2025, monitor IRS guidance on acceptable methods for reasonably approximating the FLSA premium amount;	

7 For example, if an employee earns \$20 per hour and works 45 hours in a week, the FLSA requires the five overtime hours to be paid at \$30/hour (1.5 x regular rate). That results in total pay of \$150 for those five hours. Of this amount, \$50 (i.e., \$30 - \$20 = \$10 × five overtime hours) must be separately reported on Form W-2 as FLSA premium pay. On the other hand, if, for example, an employer pays above the FLSA required overtime—say, \$35 per hour for those five hours—the extra \$25 (beyond the FLSA-required \$50) is not separately reportable on Form W-2. In addition, if an employer in California pays overtime because an employee has worked more than eight hours in a day, this overtime required pursuant to California law is not separately reportable on Form W-2.

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		$150,000 (single) or $300,000 (joint).	• Be prepared to field questions from non-exempt employees about the new rule and consider informing employees that, while overtime remains subject to withholding, they may be eligible to deduct a portion of that pay on their federal tax returns; • Monitor IRS guidance for updated reporting fields and any new withholding instructions specific to overtime pay; • Recognize that this deduction could operate like an indirect raise for employees who work substantial overtime, potentially increasing their take-home pay and making overtime shifts more economically attractive, which may have workforce planning, scheduling and retention implications.	
Paid Family and Medical Leave Credit	Employers who provide paid family and medical leave can claim a tax credit equal to a percentage of wages they pay to qualifying employees while they	The paid family and medical leave credit is permanent, and the scope of the credit is expanded to:	Employers taking advantage of the paid family and medical leave credit should review and account for new enhancements available	Tax years beginning after December 31, 2025.

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	are on family and medical leave. The credit is available for wages paid in taxable years beginning after December 31, 2017, and before January 1, 2026.	• cover employer paid insurance premiums (in addition to wages); • reduce the employer work requirement from one year to six months; and • allow employers to count state and local mandated paid leave towards eligibility for the tax credit (but the credit is only available for wages paid above mandated amounts).	under the OBBBA when calculating credit amounts.	
Employer Payments of Student Loans	"Educational assistance" provided under an employer's qualified educational assistance program (which includes eligible student loan repayments) in an amount up to $5,250 per year is excluded from the employee's gross income.	The $5,250 cap on the exclusion from the employee's gross income will be adjusted for inflation on an annual basis.	Employers who sponsor qualified education assistance programs should track the inflation adjustment for the annual cap as provided by the IRS to ensure proper administration of their qualified education assistance programs.	Tax years beginning after December 31, 2026.
Qualified Bicycle Commuting Reimbursement	Employers can reimburse employees up to $20 per month ($240 per year) for bicycle-related commuting expenses on a tax-free basis under Code Section 132(f). This exclusion was suspended from 2018 through 2025 but was scheduled to resume in 2026.	The federal exclusion for qualified bicycle commuting reimbursements under Code Section 132(f) is permanently repealed. Consequently, bicycle commuting reimbursements constitute taxable wages for federal tax purposes and remain non-	Employers should: • continue treating all bicycle reimbursements as taxable and non-deductible for federal tax purposes; • review employee benefit policies to ensure they reflect federal law; and	Immediate.

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		deductible by the employer as wages.	• evaluate state-level tax treatment of the reimbursements. Some states (e.g., California) may continue to treat bicycle reimbursements as excludable and deductible.	
Moving Expenses	Employers can reimburse employees for qualified moving expenses on a tax-free basis under Code Section 132(g). This exclusion was suspended for most employees from 2018 through 2025 but was scheduled to resume in 2026.	The federal exclusion for qualified moving-expense reimbursements under Code Section 132(g), except for active-duty military, is permanently repealed. Consequently, reimbursements for moving expenses constitute taxable wages for federal tax purposes and remain non-deductible by the employer as wages.	Employers should: • continue treating all moving-expense reimbursements as taxable wages for federal tax purposes; • review relocation assistance policies to ensure they reflect federal law; and • evaluate state-level tax treatment of the reimbursements. Some states (e.g., California) may continue to treat moving-expense reimbursements as excludable.	Immediate.
Form 1099s	Businesses are required to issue Form 1099-NEC or Form 1099-MISC to report payments of $600 or more in a calendar year for	The annual reporting threshold increases to $2,000 per recipient for 2026 and will be adjusted for inflation in subsequent years.	Employers should: • update AP and accounting systems to reflect the new $2,000 threshold (starting with reporting season for 2026); and	Applies to reportable payments made on or after January 1, 2026.

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	goods and services provided by non-employee workers.[8]		• ensure continued compliance with $600 threshold for payments through December 31, 2025.	
HEALTH AND WELFARE BENEFITS				
Affordable Care Act (ACA) Premium Tax Credits	Under the ACA, premium tax credits for health coverage purchased under a state insurance exchange are available to individuals whose household annual income is between 100% and 400% of the federal poverty level. Premium tax credits may be claimed in advance, based on expected income, subject to repayment of the excess, up to an income-based dollar cap. As part of the COVID-era stimulus package, ARPA increased the amounts of and eligibility criteria for the premium tax credits on a five-year basis. COVID-era changes to the ACA also included a year-round special enrollment period, with premium tax credits, to taxpayers whose household income is between 100% and	The OBBBA: • removes the cap on the obligation of certain lower-income individuals to repay excess advanced premium tax credits and does not extend COVID-era temporary increases to premium tax credit amounts or expansions of eligibility; • eliminates automatic re-enrollment in subsidized coverage and requires annual verifications of income, residence, family size, immigration status and health coverage; and • eliminates premium tax credits for aliens other than certain lawfully present aliens (green card holders and individuals from Cuba, Haiti	The changes to the premium tax credit provisions by the OBBBA are intended to reduce costs by cutting back COVID-era expansions of eligibility (enhanced credit amounts, relaxed income verification rules, new special enrollment periods) and by deterring fraud through the misuse of automatic enrollment and limitations on the obligation to repay excess advanced premium tax credits. In addition, the OBBBA narrows the availability of premium tax credits offered to resident aliens. In light of the expected increase in health coverage under the state exchanges, small and midsize employers that do not currently offer affordable health coverage should consider whether doing so would be	Elimination of cap on repayment of excess advanced premium tax credits effective January 1, 2026. Expiration of enhanced tax credits effective January 1, 2026. Enhanced annual verification requirements effective

[8] This $600 threshold had been in place for decades, with no inflation adjustments.

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	150% of the federal poverty level, and relaxation of income verification requirements, including for individuals who elect to be automatically enrolled in subsidized coverage in later years. Although premium tax credits are generally not available to individuals whose income is less than 100% of the federal poverty level, on the basis that they are eligible for Medicaid, an exception applies for newly arrived aliens who have not yet satisfied the five-year residency requirement for Medicaid eligibility.	and certain Pacific islands) who are expected to remain eligible for the entire enrollment period.	necessary to retain employees who otherwise would be impacted by the increased expense of obtaining coverage under a state health care exchange or through Medicaid.	January 1, 2028. Elimination of premium tax credits for low-income special enrollment period effective August 25, 2025. Changes to eligibility rules for aliens effective January 1, 2026 (or January 1, 2027, depending on the change).
Telehealth Service	The CARES Act of 2020 created a temporary safe harbor that permitted health plans to offer deductible-free telehealth services, without running afoul of regulations that restrict health savings accounts (HSAs) to high-deductible health plans (HDHPs). Intended to address remote care health care needs during COVID,	The safe harbor for deductible-free telehealth and other remote care services offered by plans that otherwise qualify as HSA-compatible HDHPs is permanently extended.	The expansion of telehealth and relaxation of limitations on HSAs reflect the Trump administration's desire to give patients more control over their health care spending. Employers that sponsor HDHPs should consider whether a telehealth benefit or other remote	Effective January 1, 2025.

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	the safe harbor expired at the end of 2024.		care service should be added to or retained by the plan.[9]	
Direct Primary Care (DPC) Service Arrangements	DPC Service Arrangements disqualify individuals from making contributions to HSAs.	DPC Service Arrangements are not disqualifying coverage for individuals participating in HSA arrangements coupled with a HDHP. DPC services include a monthly fee not in excess of an inflation-adjusted maximum ($150 per month for an individual or $300 per month for more than one individual) that covers office visits prior to the satisfaction of the HDHP deductible.	Employers that provide DPC benefits should communicate this change with 2026 open enrollment.	Months beginning after December 31, 2025.
Bronze and Catastrophic Plans for HSAs	Bronze and catastrophic plans available in the individual market on an exchange must satisfy the requirements for a HDHP to allow a covered individual to contribute to an HSA.	Bronze and catastrophic plans offered in the individual market on an exchange can be HSA-compatible HDHPs, regardless of whether the plan otherwise meets the definition for a HDHP	This change does not have a direct impact on employers.	Months beginning after December 31, 2025.
Dependent Care Assistance Program	Employees could exclude up to $5,000 per plan year ($2,500 if married filing separately) in an employer-sponsored dependent	The annual exclusion limit is increased to $7,500 per plan year (or $3,750 if married filing separately). No cost-of-living adjustments will apply; the limit will remain fixed	Employers should: • evaluate whether to adopt the higher limit based on past employee usage of DCAP benefits and the employer's gain/loss experience;	Tax years beginning on or after January 1, 2026.

[9] Please note that there are telehealth bills pending in numerous state's legislatures that may impact telehealth offerings in such states.

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	care flexible assistance plan (DCAP).[10] This exclusion allowed employees and/or employers to pay—on a tax-free basis—for an employee's eligible dependent care expenses, such as daycare, preschool, after-school care and summer day camps for eligible children.	unless modified by future legislation.	• review and update DCAP plan documents and open enrollment materials before the start of 2026; • even if the employer chooses not to increase the limit, confirm that plan terms do not automatically incorporate that increase; and • coordinate with payroll and benefits providers to ensure withholding systems and W-2 reporting reflect the employer's adopted DCAP limits. With open enrollment for 2026 approaching, timing is critical.	
Childcare Credit	Employers can claim a tax credit for providing childcare to employees up to $150,000 per year, which includes up to 25% of qualified childcare expenses and 10% of qualified childcare resource and referral expenditures.	The annual childcare tax credit increased to $500,000 per year (up to $600,000 for small businesses), which includes up to 40% of qualified childcare expenses (50% for small businesses). The 10% tax credit for qualified childcare resource and referral expenditures did not change.	Employers that do not provide childcare should evaluate significantly increased tax credit and value to employees.	Amounts paid or incurred after December 31, 2025.

[10] The $5,000/$2,500 limit had remained unchanged since 1986.

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		Childcare tax credits are also available if the employer contracts with a qualified childcare facility to provide the childcare services, or if the employer jointly owns the childcare facility.		
"Trump accounts" (Tax-Deferred Investment Accounts for Children)	N/A	Establishes a tax-advantaged children's savings program similar to an IRA beginning in 2026 for children who are born in the United States between January 1, 2025, and December 31, 2028, U.S. citizens and have social security numbers. Each eligible child will receive a one-time $1,000 contribution from the U.S. government with the possibility of additional contributions to be made by taxpayers/family members, employers and certain not-for-profit organizations. The savings program can be used for qualified expenses of the child that include higher education, first time home purchase, birth or adoption or emergency expenses (the use of the funds upon distribution impacts their tax consequences).	Employers who provide, or are considering providing, family-related benefits should consider implementing this program, possibly as a one-time only "gift" to welcome an employee's child. It is not clear the extent to which an employer could facilitate such accounts through assisting with the setup and facilitating payroll deductions. There is a strong need for regulatory guidance to clarify the dollar limits and details.	Tax years beginning January 1, 2026, but no contributions can be made until one year after the date of enactment.

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		Contributions by family members are on an after-tax basis up to $5,000, and contributions by employers are on a tax-free basis up to $2,500 (such contributions count against the $5,000 amount and are deductible as a business expense to the employer). Employers who elect to participate will have to comply with certain requirements, including a written plan document and other rules as are typical for a dependent care assistance program. Such accounts must be invested in an eligible investment, and earnings grow tax deferred. A child cannot generally take distributions until they reach 18, and contributions stop once the child reaches 18.		