From the HR Hotline

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Provided by Zywave

Zywave's HR consultants continue to provide expertise and serve as a valuable resource for navigating the pressing challenges facing employers today. This team, the HR Hotline, fields dozens of questions each day from employers seeking answers to their HR questions.

In recent months, employers have been seeking guidance on prescription drug data collection, employment verification, and legal requirements when terminating or suspending employment. While answers to these topics can vary based on locality, employer and individual circumstances, federal agencies offer guidance that can aid employers in addressing day-to-day challenges in the workplace.

This article explores questions and answers to common HR situations.

How Will the OBBB Act Impact Employee Benefits?

On July 4, 2025, President Donald Trump signed a major tax and spending bill, commonly referred to as the One Big Beautiful Bill Act (OBBB Act), into law. The OBBB Act includes changes for employee benefit plans, including provisions that:

- Expand the availability of health savings accounts (HSAs)
- Permanently extend the telehealth exception for high deductible health plans (HDHPs)
- Increase the maximum annual limit for dependent care flexible spending accounts (FSAs)
- Allow employers to help pay employees' student loans beyond 2025 and make cost-of-living adjustments to the tax exclusion for educational assistance programs
- Allow employers to contribute up to $2,500 per year to a new type of tax-advantaged account for children, called a Trump Account

HSA Expansion

Only eligible individuals can establish HSAs and make HSA contributions (or have them made on their behalf). To be HSA-eligible, an individual must:

- Be covered by an HDHP
- Not be covered by any health plan that provides coverage below the minimum required HDHP deductible, with some limited exceptions
- Not be enrolled in Medicare
- Not be eligible to be claimed as a dependent on another person's tax return

Effective Jan. 1, 2026, the OBBB Act expands HSA eligibility by allowing individuals with **direct primary care (DPC) arrangements** to make HSA contributions if their **monthly fees are $150 or less ($300 or less for family coverage).** These dollar limits will be adjusted annually for inflation. A DPC arrangement is a subscription-based health care delivery model where an individual is charged a fixed periodic fee for access to medical care consisting solely of primary care services. In addition, the OBBB Act treats DPC fees as medical care expenses that can be paid using HSA funds.

Also, to expand the accessibility of HSAs in the individual market, the OBBB Act **categorizes all bronze plans and catastrophic plans** that are available through an Affordable Care Act Exchange as HDHPs. This change is effective Jan. 1, 2026. Bronze plans have the highest deductibles and lowest premiums among the four categories (or metal levels) of individual plans. Catastrophic plans have lower premiums than bronze plans and very high deductibles.

HDHP Telehealth Exception

To be eligible for HSA contributions, individuals cannot be covered by a health plan that provides benefits, except preventive care benefits, before the minimum HDHP deductible is satisfied for the year. Historically, individuals who were covered by telehealth programs that provided free or reduced-cost medical benefits were not eligible for HSA contributions.

A pandemic-related relief measure temporarily allowed HDHPs to waive the deductible for telehealth services without impacting HSA eligibility. This relief expired at the end of the 2024 plan year. However, the OBBB Act **permanently extends the ability of HDHPs to provide benefits for telehealth and other remote care services** before plan deductibles have been met without jeopardizing HSA eligibility. This extension applies to plan years beginning after Dec. 31, 2024.

Dependent Care FSAs

Employers can provide dependent care assistance benefits for their employees on a tax-free basis, subject to a maximum annual limit. These benefit plans are referred to as dependent care FSAs (also known as dependent care assistance programs, or DCAPs). Effective Jan. 1, 2026, the OBBB Act increases the maximum annual limit for dependent care FSAs to **$7,500** for single individuals and married couples filing jointly and **$3,750** for married individuals filing separately (up from $5,000 and $2,500, respectively). The new limit has not been adjusted for inflation.

Educational Assistance Programs – Student Loans

Employers can offer programs to provide employees with undergraduate or graduate-level educational assistance. Educational assistance programs can pay for employees' books, equipment, supplies, tuition and other fees. These programs can also pay principal and interest on employees' student loans. The option to use educational assistance programs for student loans was set to expire on Dec. 31, 2025. However, the OBBB Act **permanently extends this student loan payment option.**

Tax-free benefits under an educational assistance program are limited to **$5,250 per employee per year**. Typically, educational assistance provided above this level is taxable as wages. Effective for taxable years beginning after 2026, the OBBB Act annually adjusts the $5,250 limit for inflation.

Trump Accounts

The OBBB Act creates a new type of tax-advantaged savings account for children under age 18, named a Trump Account. Effective in 2026, Trump Accounts will operate similarly to individual retirement accounts, or IRAs, where earnings grow tax-deferred. In general, annual contributions are limited to **$5,000 per child** (as adjusted annually for inflation beginning after 2027). The OBBB Act provides that children born in 2025-28 may be eligible to receive a special $1,000 contribution from the federal government.

Employers may make **tax-free contributions** to the Trump Account of an employee or an employee's dependent of up to **$2,500 per year** (as adjusted annually for inflation beginning after 2027). These programs will require a written plan document and will be subject to some of the same tax rules that apply to dependent care FSAs, such as annual nondiscrimination testing and employee notifications.

How Does the OBBB Act Impact Tips and Overtime?

Among other provisions, the OBBB Act would allow certain workers an above-the-line deduction for "qualified tips" and "qualified overtime compensation" for taxable years beginning after Dec. 31, 2024, and ending for taxable years beginning after Dec. 31, 2028.

Employers may need to adjust their payroll systems to accurately track and report qualifying tips and overtime compensation on employees' Forms W-2.

Tip Deductions

Section 70201 of the OBBB Act creates a new above-the-line tax deduction for qualified tips. Individuals must earn $150,000 or less ($300,000 if married filing jointly) in 2025 to be eligible for the tip deduction. The maximum deduction for tip income is capped at $25,000 per year, and the deduction only applies to cash tips, which include tips that are charged and tips received under a tip-sharing agreement. To be considered a **qualified tip**, the tip must be paid voluntarily without any consequence in the event of nonpayment, must not be subject to negotiation and must be determined by the payor.

To qualify for the tip deduction, individuals must work in occupations where receiving tips is customary (e.g., servers, bartenders, hotel staff, hairstylists) on or before Dec. 31, 2024. The Treasury Department will publish a list of qualifying occupations within 90 days of the OBBB Act's enactment. Qualified tips must be reported on statements furnished to the individual as required under the Internal Revenue Code (e.g., Form W-2) or on Form 4137. The OBBB Act does not change the requirement that employees and employers report all tips to the IRS. Individuals must include their Social Security number (and, if married and filing jointly, their spouse's Social Security number) on their tax return to receive the deduction.

Overtime Deductions

Section 70202 of the OBBB Act establishes a new above-the-line tax deduction for **qualified overtime compensation**. The OBBB Act defines "qualified overtime compensation" as overtime compensation paid to an individual required under Section 7 of the Fair Labor Standards Act (FLSA) that is in excess of the regular rate at which the individual is paid. The maximum deduction for overtime income is capped at $12,500 per year ($25,000 per year if married filing jointly). The deduction decreases for those earning over $150,000 per year. Employers must include the total amount of qualified overtime compensation as a separate line item on employees' Form W-2. Qualified tips cannot be claimed as qualified overtime compensation. Similar to qualified tips, individuals must include their Social Security number (and, if married and filing jointly, their spouse's Social Security number) on their tax return to receive the deduction.

What Compensation Is an Employee Owed During a Layoff or Furlough?

Eligibility for unemployment benefits is generally determined by state unemployment insurance programs rather than federal law. Therefore, employees are encouraged to contact their state's unemployment insurance program for questions regarding eligibility and benefits.

Wages Under the FLSA

In general, the FLSA only requires employers to compensate employees for hours actually worked. Therefore, employers do not need to pay wages to laid-off employees who are no longer working or on the employer's payroll, and they typically do not need to pay furloughed employees (other than payment for hours worked in the case of furloughed employees working reduced hours).

However, special considerations apply in the case of furloughed employees who are classified as exempt from overtime under the FLSA. Exempt salaried employees must be paid their full weekly salary, regardless of the number of hours they work each week. Therefore, furloughed employees who work for only a part of a given week may still be eligible to receive their full weekly salary. However, the FLSA does not require employers to compensate exempt employees for any week in which they do not perform any work, so employers may elect to furlough exempt employees by suspending or reducing their work a week at a time (for example, having employees work one week on, one week off).

In addition, furloughing exempt employees may put employees at risk of losing their exempt status (for example, reducing their annual salary to below the minimum salary threshold to qualify for an exemption). Employees who are not exempt generally receive greater wage protections, including eligibility for overtime pay for any hours worked in excess of 40 in a given workweek. Therefore, employers should consider reviewing and confirming the appropriate classification for furloughed employees to avoid violating the FLSA.

Paid Time Off Payout

Federal law does not require employers to pay employees for accrued but unused paid time off upon termination of employment. However, some states require employers to pay employees for any accrued but unused paid time off upon termination of employment (including a layoff). Some of these states may even consider a furlough to be a termination of employment that triggers a payout of unused paid time off. Therefore, employers should carefully review applicable state laws prior to implementing a layoff or furlough to confirm whether they are subject to any such obligations.

Unemployment Compensation

Employers who continue health coverage for laid-off or furloughed employees do not automatically jeopardize their employees' eligibility for unemployment benefits. In many cases, such employees (including employees who are working reduced hours, typically a reduction of more than 50%) are eligible for unemployment benefits. Eligibility for unemployment benefits is generally determined by state unemployment insurance programs rather than federal law. Therefore, employees are encouraged to contact their state's unemployment insurance program for questions regarding eligibility and benefits.

When Is an Employee Improvement Plan an Appropriate Use of Employee Discipline?

Employee discipline is one of the most challenging aspects of workforce management and can take various forms. One common type of employee discipline is the use of a performance improvement plan (PIP). A PIP is typically a formal, written document that outlines an employee's performance or behavioral deficiencies, sets forth clear and quantifiable goals, and establishes a timeline by which an employee must successfully complete such goals.

Lawful Reason for a PIP

When determining whether to place an employee on a PIP, it's vital to establish a lawful, valid and nondiscriminatory reason for the PIP. Valid reasons for a PIP may include ongoing performance-related or attendance issues or inappropriate behavior in violation of company policy. However, a PIP may not be appropriate for more severe misconduct (such as violence, sexual harassment or theft) or isolated incidents.

In all cases, employers may not put an employee on a PIP for any unlawful reason, including the following:

- Due to an employee's protected characteristic, such as those protected under the following laws:
  - **Title VII of the Civil Rights Act** prohibits discrimination on the basis of race, color, sex (including pregnancy and related medical conditions), national origin and religion
  - The **Americans with Disabilities Act** (ADA) prohibits discrimination on the basis of an employee's disability
  - The **Age Discrimination in Employment Act** prohibits discrimination on the basis of age (40 or older)
  - The **Genetic Information Nondiscrimination Act** prohibits discrimination on the basis of genetic information
  - The **Uniformed Services Employment and Reemployment Rights Act** (USERRA) prohibits discrimination on the basis of past, current or prospective military service
- Because an employee seeks or takes protected leave, including:
  - Family and Medical Leave Act leave
  - USERRA military leave

    - Workers' compensation leave
    - ADA disability leave
    - Temporary or short-term disability leave (including on the basis of pregnancy)
- Because an employee seeks or obtains a disability, pregnancy or religious accommodation
- In response to protected whistleblowing activities
- In response to union-organizing activity as protected by the National Labor Relations Act
- In response to an employee who sought to enforce their wage rights, including those under the FLSA

Additional Legal Risks

Even if the employer has established a lawful justification for placing an employee on a PIP, employees may take legal action when other circumstances could reasonably suggest the PIP was implemented for unlawful reasons. Such circumstances may include:

- The employee recently requested or received an accommodation for disability, pregnancy, childbirth or a related medical condition, or religious beliefs.
- The employee recently complained of discrimination, retaliation, unfair labor practices or inadequate wages, or similar complaints.
- The employee has engaged in union-organizing activity.

Document the Reason for the PIP

To avoid a potential claim of discrimination or retaliation, it is imperative that employers document the lawful, nondiscriminatory reason for placing an employee on a PIP. Specifically, in the event an employee later claims they were disciplined for any unlawful reason, proper and timely documentation can provide a contemporaneous defense for the employer.

Employer Takeaways

Employee discipline can be challenging. However, an effective PIP practice can be a critical tool for an employer. PIPs can provide a helpful framework for employees to understand and improve performance deficiencies and for employers to work with employees to improve poor performance. Further, a PIP can help provide support for employers who decide to take further disciplinary action against an employee who cannot improve through a PIP. Therefore, it is important for employers to develop a clear and consistent PIP practice and ensure proper documentation. Employers may also wish to train managers, supervisors and HR personnel on how to create and implement effective PIPs.

Employers should note that compliance requirements vary by locality, and they should contact local legal counsel for legal advice. We'll keep you apprised of noteworthy updates on these topics. For resources on any of these topics discussed, contact us today.

The HR Hotline can provide general guidance but cannot provide tax advice or review plan documents for compliance.