

December 3, 2009

2009 Year End Planning and Compliance

As another calendar year draws to a close, it is again time to consider what actions might be necessary to comply with changes in the law and to address recurring annual obligations. This Alert summarizes some of those issues.

Health & Welfare Plan Changes. Starting in 2010, health and welfare plans must be in compliance with many new rules, including:

- mental health and substance addiction parity
- genetic nondiscrimination (under the law known as “GINA”)
- coverage for college students with a serious health condition (under “Michelle’s Law”)
- special enrollment rights relating to the Children’s Health Insurance Program, or “CHIP” (including revising enrollment policies and updating HIPAA special enrollment rights notices)
- extension of HIPAA privacy to business associates and other changes under the “HITECH” Act
- Medicare coverage reporting obligations

Defined Benefit Plan Funding Provision Amendments. The Pension Protection Act brought significant changes to the funding rules applicable to defined benefit pension plans. Calendar year plans must be amended for compliance by December 31, 2009.

Other Retirement Plan Amendments. All retirement plans must be amended, if necessary, to allow rollovers for nonspouse beneficiaries, and to waive minimum required distributions, if desired. In addition, plans may want to amend to reflect the new rules under the “HEART Act,” effective in 2009, which provide tax benefits and incentives to military personnel.

Cost of Living Adjustments to Benefit Limits. The various dollar limitations for retirement plans and other items for tax year 2010 will remain the same as for 2009 – with no cost of living adjustments, as follows:

Compensation Limit	\$245,000
Section 415 Defined Benefit Dollar Limit	\$195,000
Section 415 Defined Contribution Dollar Limit	\$49,000
Elective Deferral Limit	\$16,500
Catch-up Contribution Limit	\$5,500
Highly Compensated Employee Definition Limit	\$110,000
Key Employee Officer Compensation	\$160,000
ESOP Payout Limits	\$195,000/\$985,000
Social Security Wage Base	\$106,800
IRA Contribution Limit (Traditional, Nondeductible or Roth)	\$5,000

403(b) Plan Documents. Sponsors of 403(b) annuity plans – regardless of whether they are subject to ERISA – must adopt a formal written plan document by December 31, 2009. During 2009, these plans were required to have been operated in compliance with new regulations, and have until the end of 2009 to retroactively correct any operational errors.

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401(k) Plan Notices. 401(k) plans may have several recurring annual notices to track, including: notice of a safe harbor arrangement; notice of an automatic enrollment feature; and notice of a qualified default investment alternative (“QDIA”). Most third party administrators prepare these notices as part of your administrative package. The preferred time for distributing these notices has likely already expired, so if your plan is required to but has not distributed them, immediate action is required.

“Cycle D” Determination Letter Filers. The IRS is currently accepting determination letter applications for individually-designed qualified retirement plans for “Cycle D” filers. An individually-designed plan is considered a “Cycle D” filer if the plan sponsor’s federal employer identification number ends in a “4” or a “9.” There are special rules for multiemployer plans, multiple employer plans, and plans maintained by multiple members of the same controlled group that may require or permit a different filing cycle. The deadline for a Cycle D filer to submit a restated plan to the IRS for a determination letter is February 1, 2010. Cycle D Filers must either (i) restate and submit individually-designed qualified retirement plans to the IRS, or (ii) sign a Form 8905 Certification of Intent to Adopt a Pre-Approved Plan, by February 1, 2010.

Executive Compensation and Equity Plans. Executive compensation programs intended to constitute “performance-based compensation” for purposes of the Code Section 162(m) limits on deductible compensation may need to be revised to eliminate provisions allowing payment on termination of employment (see our previous [Benefits Alert](#) on this subject). Also, in 2010 employers must begin to track stock transfers under incentive stock options and employee stock purchase plans, and be prepared to report such transfers in 2011 (in addition to the information reporting to participants already required).

Contact the Benefits Law Group for Assistance. This Alert summarizes some of the issues you might want to consider by year-end. For a more detailed compliance review, please contact any member of the Benefits Law Group for assistance.



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