ROBINSON & COLE LLP
# Employee Benefits & Compensation

### Proposed Regulations Issued on Roth 401(k) Accounts

For plan years on or after January 1, 2006, 401(k) plans may permit participants to make Roth contributions to the plan if the plan so provides. The IRS has issued Proposed Regulations providing guidance on designating deferrals to a 401(k) plan as Roth contributions. If a 401(k) plan permits Roth contributions, participants will be allowed to designate all or a portion of their elective deferrals as a Roth contribution. The designation of a deferral as a Roth contribution is irrevocable. Both 401(k) pre-tax elective deferrals and Roth contributions will be treated as elective deferrals and the combined amount that a participant can defer cannot exceed the applicable deferral limit for the year ($15,000 for 2006, plus catch-up contributions). Roth contributions will be taken into account in a plan's ADP test. If a plan permits Roth 401(k) contributions, separate accounts must be established for the Roth contributions. Forfeitures may not be allocated to that account. Upon termination of employment, Roth contributions can only be rolled over to a Roth IRA or to another plan that permits Roth 401(k) accounts.

If a participant designates a deferral as a Roth contribution, the deferral is includible in the employee's income in the year of deferral and, subject to certain restrictions, distributions of the contributions as well as income attributable to the contribution are not taxed. This tax treatment differs significantly from the tax treatment of ordinary elective deferrals, which are not included in income until they are distributed.

### U. S. District Court in Connecticut Makes Significant Ruling on Retiree Medical Benefits

In the case of Adams v. Tetley USA, Inc., a group of retirees filed suit to enforce their alleged right to retiree medical coverage from their former employer, Tetley USA, Inc., who was represented by Robinson & Cole LLP. The retirees alleged that the employer had breached its fiduciary duties under ERISA in canceling its retiree medical benefit program and in failing to tell the retirees that their retirement benefits could be terminated. The United States District Court for the District of Connecticut found in favor of the employer and held that the terms of the employer's retiree medical program did not create a vested right to lifetime medical benefits.

Although the earliest Summary Plan Description did not state that the employer retained the right to amend or terminate retiree benefits, later versions of the SPD contained a reservation of rights. The retirees argued that once they commenced employment, the employer could not alter its promise of retiree medical benefits. The court found that the employer had not promised lifetime retiree medical benefits, and held that the employer was not prohibited from eliminating retiree medical benefits while the retirees were actively employed. The court found that the operative plan documents are those in effect at the time an employee retirees, not at the time employment commences. Since the employer had clearly reserved

its right to terminate retiree medical coverage by the time these retirees ceased active employment, the retirees were not entitled to lifetime vested medical benefits.

The retirees also alleged that the employer breached its fiduciary duty to administer the plan in accordance with plan documents by failing to qualify the information it provided to the retirees with a statement that medical benefits could change. Although some of the communications to the retirees lacked an express reservation of the employer's right to terminate retiree medical benefits, the court found that the employer was not required to include such a reservation of rights in every communication. The court ruled in favor of the employer and found that these communications did not violate the employer's fiduciary duties when the Summary Plan Description contained unambiguous language reserving the right to terminate coverage.

#### Automatic Rollover Rules Become Effective on March 28

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) prohibits qualified plans from cashing out automatic distributions exceeding $1,000 without a participant's consent, unless such cash-out distributions are rolled over to an IRA established for the participant. Plan administrators can continue to make cash-out distributions of $1,000 or less without a participant's consent. If a plan sponsor wishes to continue to make cash-out distributions of accounts with a balance of less than $5,000, the plan must provide that distributions of more than $1,000, but less than $5,000, will be rolled over to an IRA if a participant does not consent to receive the distribution.

The automatic rollover rules apply to mandatory distributions made on or after March 28, 2005. If a plan administrator has not sufficiently established procedures to accomplish the automatic rollover of a mandatory distribution before March 28, 2005, the plan will be treated as satisfying the rules if covered distributions are made on or before December 31, 2005. Qualified plans must be amended to comply with the new rules before the end of the first plan year ending on or after March 28, 2005; for calendar year plans, this will be December 31, 2005.

#### Defined Benefit Plans May Need to be Amended to Reflect Retroactive Annuity Starting Date Rules

Although defined benefit plans are not required to offer retroactive annuity starting dates, some plans permit retroactive annuity starting dates for participants who have delayed applying for pension benefits. If a plan permits retroactive annuity starting dates, it may need to be amended to update its procedures. Under new Regulations, a plan can permit pension payments to be made retroactive to a date before the participant applied for benefits if:

• The plan specifically permits retroactive annuity starting dates.

• A participant is offered the choice of having a retroactive annuity starting date and receiving make-up payments, or having his or her pension benefit recalculated as of a later date with benefits commencing on that date.

• Spousal consent for RASD is not required unless the survivor benefit is less than the benefit that would have been payable under a qualified joint and survivor annuity using an annuity starting date that is after the date the qualified joint and survivor annuity explanation has been provided.

• Interest must be credited to retroactive payments.

Plan sponsors that currently offer retroactive annuity starting dates may wish to review their plans and procedures to see whether or not these requirements are satisfied. If not, the plan will need to be amended during the 2005 plan year, effective for plan years beginning on or after January 1, 2004, to reflect these rules. The Explanation of Qualified Joint and Survivor Annuity and applicable procedures may also need to be updated to satisfy the new regulations.

### DOL Issues USERRA Notice

Effective March 10, 2005, the Veterans Benefits Improvement Act of 2004 requires employers to notify employees of their rights and obligations under USERRA. The DOL has issued a form notice of that can be used to meet this requirement. The notice should be posted at a prominent location where employees customarily check for such information in the workplace, such as on an employee bulletin board.

### Additional Guidance on Nonqualified Deferred Compensation Plan Rules Expected this Summer

The IRS has announced that it will be issuing additonal guidance on the new nonqualified deferred compensation plan rules this summer. The guidance is supposed to address distribution elections, initial elections to defer, the second deferral election rules, stock appreciation rights, and closely held corporations.

### Compliance Date for HIPAA Security Approaching

The date for complying with the third piece of HIPAA's Administrative Simplification requirements is fast approaching. Covered entities must be in compliance with the security requirements by April 20, 2005. Covered entities include health plans, healthcare providers, and healthcare clearinghouses. Small plans have an additional year to meet their compliance obligations.

This is an archive of past issues. As a result, it may contain information that is not current.

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