ROBINSON & COLE LLP

# Employee Benefits & Compensation

### IRS Issues Guidance on Nonqualified Deferred Compensation

On September 29, 2005, the IRS released long awaited proposed regulations under Section 409A of the Code. The proposed regulations have an effective date of November 1, 2007, with a deadline of December 31, 2006 for updating nonqualified plans. An upcoming special edition of Benefits e-news will describe the proposed regulations in greater detail.

### IRS Establishes New System for Issuing Favorable Determination Letters

The IRS has announced a new staggered five-year cycle for plan sponsors to obtain determination letters for qualified retirement plans. The initial five-year cycle will begin on February 1, 2006 and will include approval of amendments made pursuant to the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA"). The cycle in which a plan sponsor is to request a favorable determination letter is based on the last digit of the plan sponsor's employer identification number. If a plan sponsor's employer identification number ends with the number 1 or the number 6, the plan must be amended and restated and submitted to the IRS between February 1, 2006 and January 31, 2007.

### Connecticut's Civil Union Law Becomes Effective October 1

As previously reported in Benefits e-news, effective October 1, 2005, the State of Connecticut will recognize civil unions between same sex partners. Under the law, civil union partners are entitled to receive the same benefits, protection and responsibilities as are granted to spouses under Connecticut law.

The State of Connecticut Insurance Department has issued a letter stating that health insurance companies, including managed care organizations, are required under the new law to treat civil union partners in the same manner as spouses for purposes of health benefits. The Department has indicated that existing form language will be interpreted pursuant to the intent of the civil union directive and companies will not be required to file new forms with the Department.

The Attorney General for the State of Connecticut has issued an Opinion providing guidance on which same-sex relationships recognized in other states will be recognized in Connecticut. The Opinion states that civil unions entered into in Vermont and domestic partnerships entered into in California will be recognized as a Connecticut civil union for purposes of Connecticut law. However, same-sex marriages will not be recognized in Connecticut. Persons who move to Connecticut who have previously entered into a same-sex marriage in Massachusetts or another country will need to enter into a Connecticut civil union in order to be entitled to the benefits afforded civil union partners.

### Relief Issued for Victims of Hurricane Katrina

The IRS has issued Guidance intended to benefit victims of Hurricane Katrina which includes the following departures from current law:

• Employers can establish leave donation programs to permit employees to donate their vacation or sick leave in exchange for employer cash payments to charitable organizations providing relief for victims of Hurricane Katrina. Employers that establish leave donation programs will be permitted to deduct the amount of their cash donation and employees will not have to include the value of the donated leave in their income.

• The IRS has streamlined and liberalized the hardship rules to allow plan sponsors to make loans and hardship distributions to victims of Hurricane Katrina and their relatives.

• The deadline for plan sponsors to satisfy the minimum funding requirements for pension plans has been extended for employers located within the geographical region affected by the hurricane. These plans will have until October 31, 2005 to make contributions or apply for waivers if the deadline for such actions was between Aug. 29, 2005 through Oct. 30, 2005..

• The deadlines have been tolled for the period between August 29, 2005 and January 3, 2006 for participants and plan sponsors directly affected by Hurrican Katrina for:

1. The HIPAA portability timeframes, including the period of time that employees have to secure health coverage without losing coverage as a result of preexisting conditions; the time period for taking advantage of HIPAA's special enrollment rights that come into play in the event of certain events has been extended; and the deadline for plan sponsors to provide HIPAA certificates of creditable coverage.

2. The COBRA timeframes, including the 60 day period for participants to elect COBRA coverage; the timeframe for participants to submit COBRA premium payments; and the deadline for plan sponsors to provide COBRA notices.

3. ERISA benefit plan claims submission and appeals.

Additionally, the DOL announced that Form 5500 filings required to be filed between August 29, 2005 and January 3, 2006, have been granted an extension until January 3, 2006 for plans affected by Hurrican Katrina.

Congress has also passed and the President has signed a disaster relief package. This package removes the penalty for withdrawals from qualified plans for qualified disaster relief distributions; permits income averaging for disaster relief distributions from qualified plans; permits employees to make contributions to make up for withdrawals that an employee wishes to cancel due to Hurricane Katrina; tolls payments on existing loans for one year and allow such outstanding loans to be extended for one year; and increases the limit on Katrina related loans from $50,000 to $100,000.

### Pending Pension Legislation Could Impact Plan Funding

Congress is currently considering major legislation that will have a significant impact on pension plans.  One significant provision provides guidance for sponsors of cash balance plans.  This provision is currently drafted to provide retroactive protection for such plans.  Another major provision reforms the defined benefit plan funding rules.  The funding provisions include an extension of the amortization of unfunded amounts from 7 years to 10 years, a 5 year limit on assumptions used in computing at risk liability, and set forth rules relating to prefunding balances.  We will continue to monitor this legislation to determine how it impacts plan sponsors.