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Benefits Legal Update

NOVEMBER 2008

IRS Releases 2009 Cost of Living Increases to Plan Limits

The IRS recently released new pension plan limitations for 2009. The changes are as follows:

- The amount that employees can elect to defer to a Section 401(k) plan, Section 403(b) plan, and Section 457 plan has increased from \$15,500 to \$16,500.
- The amount that employees who are age 50 or older may defer as a catch-up contribution has increased from \$5,000 to \$5,500.
- The cap on annual benefits from a defined benefit plan has increased from \$185,000 to \$195,000.
- The cap on annual additions to a defined contribution plan has increased from \$46,000 to \$49,000.
- The amount of annual compensation that may be taken into account in calculating plan contributions and benefits has increased from \$230,000 to \$245,000.
- The compensation amount for determining who is a highly compensated employee has increased from \$105,000 to \$110,000. (As this determination is typically made by looking back at the prior year's compensation, this change will not practically apply until 2010.)
- The compensation amount for determining who is a key employee for a top-heavy plan has increased from \$150,000 to \$160,000. (As this determination is typically made by looking back at the prior year's compensation, this change will not practically apply until 2010.)

The Social Security Administration has announced that the 2009 taxable wage base will be \$106,800, an increase from \$102,000 in 2008.

Same-Sex Marriage Now Legal in Connecticut

Following the Connecticut Supreme Court's ruling in *Kerrigan v. Commissioner of Public Health*, Connecticut joined Massachusetts and California in allowing same-sex marriage. The plaintiffs in *Kerrigan* claimed that Connecticut's civil union statute, which defined marriage as between a man and a woman but provided for same-sex civil unions legally equivalent to marriage, was unconstitutional under the Connecticut Constitution. In its decision released on October 10, 2008, the Court found that civil unions were not the equivalent of marriage, and that by limiting marriage to unions between a man and a woman, the statute discriminated on the basis of sexual orientation in violation of the Connecticut Constitution.

Section 403(b) Document Deadline Around the Corner

All Section 403(b) plan documents must be updated to reflect current law, including the new final Section 403(b) regulations, by January 1, 2009. Additionally, all Section 403(b) plans not previously set forth in a written document must be put in writing by that deadline. The IRS has recently indicated in informal comments that this deadline will not be extended but that the IRS will work with Section 403(b) plan sponsors in bringing documents adopted by the deadline into compliance after the deadline has passed.

Plans or Agreements Subject to Section 409A Must Be Amended by December 31, 2008

All plans or agreements that could be subject to Section 409A must be updated to reflect the requirements of Section 409A and the final Section 409A regulations, or amended such that the plan or agreement is no longer subject to 409A, no later than December 31, 2008. All plans or arrangements that have the potential to provide for the payment of compensation earned in one year in a later year should be evaluated for Section 409A compliance as soon

earned in one year in a later year should be evaluated for Section 409A compliance as soon as possible to ensure compliance by December 31. The IRS has indicated that this deadline will not be extended.

If you have any questions regarding how the law changes and deadlines described in this update affect your benefit programs, or need assistance in determining if your policies and plan documents are in compliance given these law changes, please contact any member of Robinson & Cole's Benefits Group.

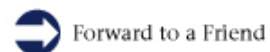
Bruce B. Barth
(860) 275-8267
bbarth@rc.com

Cynthia R. Christie
(860) 275-8259
cchristie@rc.com

Karen L. McDonough
(860) 275-8231
kmcdonough@rc.com

Virginia E. Spiess
(860) 275-8291
vspiess@rc.com

Jean E. Tomasco
(860) 275-8323
jtomasco@rc.com



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