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## Benefits Legal Update

### **Treasury and IRS Issue a Flood of New 401(k) Plan Guidance to Further President's Retirement and Savings Initiative**

On September 5, 2009, the Treasury Department and Internal Revenue Service issued seven new pieces of guidance intended to further President Barack Obama's Retirement and Savings Initiative. This guidance, which consists of both Revenue Rulings and Notices, was issued concurrently with a radio address by the President outlining the Initiative. It provides direction regarding automatic enrollment in 401(k) plans and SIMPLE IRAs, describes how plan sponsors may amend their plans to allow for the contribution of the value of unused vacation or other similar leave into nonelective contributions to a 401(k) plan, and updates the current safe harbor rollover notice.

#### **Automatic Enrollment**

In his address, the President pointed to automatic enrollment in employer retirement plans as a key component of his plan to increase employee savings for retirement. Not surprisingly, four of the seven pieces of guidance specifically address automatic enrollment issues. The first piece, Revenue Ruling 2009-30, describes how an automatically enrolled participant's contribution percentage may be increased over time to reflect changes in base pay. The other three pieces are Notices intended to assist plan sponsors in adding automatic enrollment features to their plans:

- Notice 2009-65 provides sample plan amendments that may be used to add an automatic contribution arrangement or eligible automatic contribution arrangement to a 401(k) plan.
- Notice 2009-66 provides guidance in a question-and-answer format to small employers who choose to include an automatic contribution arrangement in a SIMPLE IRA plan.
- Notice 2009-67 provides sample automatic contribution language that a SIMPLE IRA plan sponsor can adopt with automatic IRS approval.

#### **Unused Paid Time Off**

A second focus of the Initiative is encouraging employees to contribute unused paid time off to a retirement plan rather than receiving a cash payment for such unused time. Two Revenue Rulings were issued to advance this goal. Revenue Ruling 2009-31 describes how a plan may be amended to permit the contribution of the value of unused paid time off at the conclusion of a plan year while Revenue Ruling 2009-32 describes how a plan may be amended to permit the contribution of the value of unused paid time off upon termination of employment.

#### **Safe Harbor Explanations of Eligible Rollover Distributions**

The current and somewhat difficult to understand notice provided to plan participants eligible to receive a rollover of their retirement savings has also been dramatically revamped in an effort to make it both more comprehensive and more understandable to participants. Notice 2009-68 contains two new safe harbor notices, a general notice and a notice for Roth accounts, that may be provided to recipients of eligible rollover distributions from an employer plan. The notices are intended to address a variety of plan features and types, and may be customized by plan sponsors to reflect the terms of individual plans. The notices may be used immediately, but must be used beginning January 1, 2010. The IRS anticipates publishing a Spanish language version of these model notices.

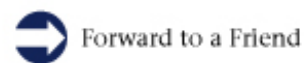
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If you have any questions about the guidance described in this legal update, or wish to obtain a copy of the relevant provisions, please contact any of the following attorneys:

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