

Having trouble viewing this message? Please click [here](#).

Robinson+Cole

Employee Benefits and Compensation

EMPLOYEE
HANDBOOK

October 2016

IRS Clarifies Benefit Coverage Requirements for Employees of Tax-Exempt Disregarded Entities

The Internal Revenue Service (IRS) recently issued General Counsel Memorandum 201634021 (Memorandum), clarifying benefit coverage requirements for employees of a disregarded LLC wholly owned by a single member tax-exempt organization (referred to as a “disregarded entity”). Specifically, the Memorandum concludes that such employees must be permitted to participate in the member’s 403(b) plan and may be permitted to participate in the member’s 457(b) plan.

The IRS explains that the activities of a disregarded entity are treated in the same manner as a sole proprietorship, branch, or division of the member. Accordingly, the employees of a disregarded entity are treated as employees of the member for purposes of Section 403(b) of the Internal Revenue Code (Code). This means that, if the member sponsors a 403(b) plan that permits elective deferrals, the employees of the disregarded entity must also be eligible to participate in the member’s 403(b) plan to avoid violating the “universal availability” rule. A 457(b) plan sponsored by the member permits the employees of a disregarded entity to participate in the member’s 457(b) plan; however, they are not required to do so because no similar universal availability requirement exists under Section 457 of the Code.

Although not formal guidance, the Memorandum conveys the position of the IRS and therefore merits the attention of any tax-exempt organization that sponsors a 403(b) or 457(b) plan and is a member of a disregarded entity.

If you have any questions about your 403(b) or 457(b) plan in light of the Memorandum, please contact one of the following lawyers in Robinson+Cole's [Employee Benefits and Compensation Group](#):

[Bruce B. Barth](#) | [Devin M. Karas](#) | [Virginia E. McGarrity](#) | [Jean E. Tomasco](#)

For insights on legal issues affecting various industries, please visit our [Thought Leadership](#) page and subscribe to any of our newsletters or blogs.

Boston | Hartford | New York | Providence | Stamford | Albany | Los Angeles | Miami | New London | rc.com
Robinson & Cole LLP

© 2016 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.