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THE CICOTTE LAW FIRM LLC

ERISA AND EMPLOYEE BENEFITS + CORPORATE

JUNE 2009 NEWSLETTER

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CONTACTS

- **George F. Cicotte,** ***george@cicottelaw.com***
- **Sandra I. Muller,** ***sandy@cicottelaw.com***
- **Treaver K. Hodson,** ***treaver@cicottelaw.com***
- **Carrie C. Blodgett,** ***carrie@cicottelaw.com***

IN THIS ISSUE: PRIVACY, PLAN LOANS, AND PREMIUMS

Summer is in full swing, but the vacation season has not included a break in issues for employers. This newsletter's topics include:

Red Flags Rules: Employee plans may be considered creditors required to institute written anti-identity theft programs.

Update on E-Verify: E-Verify's effective compliance date has again been officially delayed. The new effective date is September 8, 2009. Employers should be prepared to comply with E-Verify's added burdens.

Update on COBRA premium subsidies: The IRS recently published further guidance for employers subject to ARRA's COBRA premium subsidy requirements. An appeals process for rejected COBRA subsidy applications has been instituted, and questions concerning reimbursement for the subsidy on quarterly payroll tax forms have been answered.

Regulation Z: Regulation Z's disclosure requirements under the Truth in Lending Act, which become effective July 1, 2010, will not affect plan loans. Plan loans were recently exempted from Regulation Z's rules.

Required Minimum Distributions: In 2009, required minimum distributions may be waived.

403(b) prototype plan: The IRS has proposed a program for approval of prototype 403(b) plans and issued sample 403(b) plan language.

Insurance regulations: New guidelines for employer-owned life insurance policies require compliance by June 15, 2009.

Many multi-employer plans not safely funded: Unsafe funding levels have increased this year.

Please feel free to contact us with questions you may have concerning this issue's topics.

UNSAFE FUNDING STATUS FOR MOST MULTI-EMPLOYER PLANS

An April 2009 survey from the International Foundation of Employee Benefit Plans shows the number of multi-employer defined benefit plans not considered "safely" funded has increased from 20% to 80% in the last year. Only 20% of these plans are certified as "safe"; those plans funded at 80% or more are considered "safe." The economic recession and an aging population are likely factors in this increase.

Multi-employer pension plans are collectively bargained defined benefit plans to which more than one employer must contribute.

In December of 2008, Congress passed the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), giving relief to troubled multi-employer defined benefit plans by granting plans a one-year funding status freeze option. A majority of plans are choosing to use the funding status freeze.

Employers participating in multi-employer plans looking to exit these plans could be subject to increased withdrawal liability as result of their multi-employer plan's unsafe funding status. Employers considering withdrawal should consult an attorney to minimize withdrawal liability obligations.

COBRA PREMIUM ASSISTANCE UPDATE, PT. 1

The IRS has issued new guidance on the COBRA premium subsidy available to "assistance eligible individuals" (AEIs) as part of the American Recovery and Reinvestment Act of 2009 ("ARRA") passed in February 2009 .

Employers who must provide the subsidy
All employers subject to federal COBRA requirements (generally employers with 20 or more employees) or similar state requirements must provide the subsidy. New IRS guidance explicitly includes self-insured group health plans as being among employers subject to providing the COBRA premium subsidy.

Employers in the U.S., as well as employers in Guam, American Samoa, the U.S. Virgin Island, Puerto Rico, and the Commmonwealth of the Northern Mariana Island are all subject to COBRA premium assistance provisions.

In terms of administration, the employer does not need to pay the 65% subsidized amount for an AEI until a 35% payment is received.

Employers not required to provide subsidy
Employers who are not required to provide COBRA under federal or similar state law are not required to provide a COBRA premium subsidy. Employers not required to provide COBRA under federal law include those employers with fewer than 20 employees.

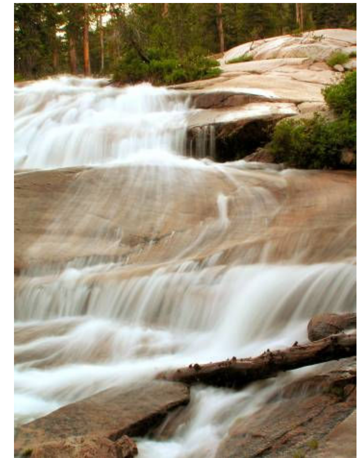
Tax exempt entities *are* required to provide the subsidy if the tax-exempt entity is required to provide COBRA continuation coverage.

Subsidy appeals process published
The Department of Labor ("DOL") released the COBRA subsidy appeals process in May 2009 for those individuals claiming an employer wrongfully denied their application for the COBRA subsidy. Denied individuals may submit an appeal by completing a form available at http://www.dol.gov/ebsa/COBRA/main.html, then submitting the form via mail or online to the DOL with any relevant documentation to support their claim. Those eligible for the subsidy must have been involuntarily terminated some time between Sept. 1, 2008 and Dec. 31, 2009 and not be eligible for other group coverage. The appeal application attempts to verify eligibility; the form questions whether the applicable termination was "involuntary" and whether proper notification was received. While the DOL's appeals process does not explicitly indicate whether an employer or plan administrator will be contacted about any appeals, such contact may be assumed. Employers should use care and consider using legal counsel in responding to the DOL concerning these appeals. The DOL must make a determination within 15 days of receipt of an appeal; thus, employers should be ready to provide their reasons for rejection promptly.

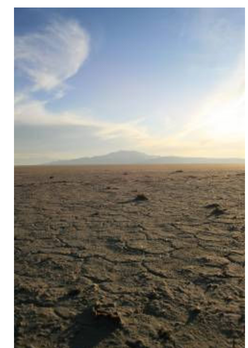
Claiming the payroll credit
Employers are entitled to a payroll tax credit for the 35% COBRA premium subsidy paid for AEIs. The credit is claimed on the employer's quarterly federal tax return, Form 941, by entering COBRA premium subsidy payments on line 12a and entering the number of individuals given COBRA subsidies on line 12b.

The IRS recently clarified what should be done if more than one individual is covered by COBRA due to the individual's involuntary termination (such as receiving subsidy for self plus spouse or dependents). The IRS has indicated only one individual (i.e. the directly involuntarily terminated individual) should be entered on 12b, not the involuntarily terminated individual plus spouse and/or dependents. Each person is reported only once per quarter, regardless of the frequency of premium payments.

Additional information concerning claiming the credit is available at http://www.irs.gov/newsroom/article/0,,id=204708,00.html.



"Employers should use care in responding to the DOL concerning these appeals, in the event the DOL exploits the opportunity to investigate the employee plan"



COBRA PREMIUM ASSISTANCE UPDATE, PT. 2

Time subsidy ends
According to new IRS guidance, an AEI's period of eligibility to receive the COBRA subsidy will apply until the earliest of (1) the date that is nine months after the first day of the first month for which the COBRA premium subsidy rules applied to the AEI; (2) the date the AEI becomes eligible for other group health plan coverage; or, (3) the date the AEI is no longer eligible for COBRA continuation coverage.

"Involuntary termination" more fully defined
The ambiguous term "involuntary termination" has been better explained. Per new IRS guidance, a general definition for involuntary termination in light of the COBRA premium subsidy is "an employer-initiated layoff."

Notice 2009-27 defines involuntary termination as "a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services."

Situations where involuntary termination occurs, according to Notice 2009-27, include an employee-initiated termination, given in response to an employer-created material negative change in employment. Employer failure to renew an employment contract where an employee was able and willing to renew the contract also constitutes involuntary termination.

The DOL holds that "being told not to come to work until further notice" constitutes involuntary termination. Per Notice 2009-27, involuntary termination does *not* include death or absence due to disability or illness.

While the additional information concerning involuntary termination is useful, Notice 2009-27 explicitly states that whether a termination is involuntary must be analyzed based on all the facts and circumstances of each case. Even if an employee voluntarily terminates employment, if the facts and circumstances show that the employer would have terminated the employee's employment, absent the employee's voluntary termination, an involuntary termination has occurred. Thus, employers will likely continue to find "involuntary termination" a gray area when confronted with unique employee termination situations.

Dental plans
According to the IRS, the COBRA premium subsidy must be provided for "any group health plan, including medical, dental and vision coverage." However, the COBRA premium subsidy is not extended to a flexible spending arrangement ("FSA") provided under a cafeteria plan.

Automatic reductions versus giving notice
Employers may consider using automatic billing reductions, rather than sending out notice and waiting for responses, for those former persons the employer deems eligible for the COBRA premium subsidy. This method may be seen as the easiest method for administering the COBRA premium subsidy. However, employers should be warned against this method. The IRS will not allow employers to automatically reduce all AEIs' COBRA premiums to 35%, in lieu of providing notice to an AEI of the subsidy and allowing the AEI to complete and send an application for the subsidy to the employer. One reason for waiting for an AEI to complete an application sent with notice is that employers may not know whether an individual is eligible for the subsidy. While an employer may know whether an employee was involuntarily terminated, the employer does not know whether the individual is eligible under another group health plan. Eligibility under a group health plan would prevent eligibility for the COBRA premium subsidy. Thus, employers should not assume eligibility and automatically reduce COBRA premiums due.

> "The IRS states whether a termination is involuntary must be analyzed based on all the facts and circumstances of each case"

Employer tasks in light of new guidance
Employers must continue to provide notice to AEIs, be prepared with supporting documentation in case of an appeal, and comply with procedures for claiming the 65% subsidy.

IRS ISSUES GUIDANCE ON EMPLOYER-OWNED AND CORPORATE-OWNED LIFE INSURANCE

The IRS just issued comprehensive guidance concerning employer-owned life insurance policies, including clarification as to which insurance contracts are covered by the rules, reporting and notice obligations, and tax ramifications including the tax treatment of death benefits.

The new guidelines in IRS Notice 2009-48 implement requirements of the Pension Protection Act of 2006's (PPA) addition of Internal Revenue Code sections 101(j) and 6039I. These guidelines, effective June 15, 2009, apply to policies issued after August 17, 2006.

What is an employer-owned contract?
Employer-owned life insurance contracts are the type of contracts affected by the new rules, and are typically defined as life insurance contracts (1) owned by a person engaged in a trade or business, which (2) insures the life of an employee of the trade or business as of the date the contract is issued, and (3) for which the direct or indirect beneficiary is the owner. A contract owned by a grantor trust (for example, a "rabbi trust") may be an employer-owned life insurance contract. Split dollar arrangement contracts may qualify as an employer-owned life insurance contracts.

A contract owned by (1) a relation of the person engaged in the trade or business, (2) a sole proprietor insuring his or her own life, or (3) a qualified plan or welfare benefit trust is *not* an employer-owned life insurance contract subject to the new rules.

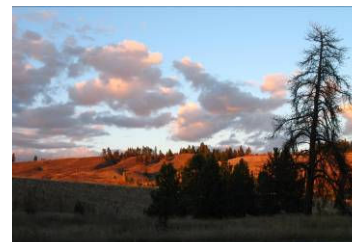
Notice and consent requirements
The "applicable policyholder" is required to give the IRS an annual notice (via Form 8925), providing the amount of insurance at year's end, the policyholder's type of business, the number of employees the policyholder employs at the year's end, and certification that each insured employee gave valid consent.

Valid consent requires that before an employer-owned policy insuring the life of an employee is issued, the employer must: (1) give the employee written notice of the employer's intention to insure the employee's life, with the employer or another policyholder as beneficiary; (2) give the employee notice of the insurance's maximum face value on the policy's issuance date; and, (3) obtain the employee's written consent to (a) being insured by the contract and (b) continuation of the contract without regard to termination of employment.

Notice and consent requirements may be fulfilled electronically so long as an electronic filing system meets requirements set forth in IRS guidance on Notice 2009-48, Question and Answer #11, found at http://www.irs.gov/irb/2009-24_IRB/ar11.html#d0e1214. The contract must be issued within a year of the employee's consent or before the employee's termination, whichever is earlier. Any "material change" in death benefits or contracts creates a new issue date requiring new consent. To determine whether notice and consent is timely, the date of life insurance contract issuance is the later of (1) the formal date of life insurance contract issuance, (2) the coverage's effective date, or (3) the date of application for coverage.

Tax implications
The amount a policy holder can exclude from gross income cannot be greater than the sum of premiums and any other amounts paid by the policyholder for the contract.

The death benefit exclusion rule will not apply if a contract meets notice and consent requirements, so long as: (1) the insured was a highly compensated individual or employee when the contract was issued; (2) the insured was an employee within the 12 months preceding his or her death; (3) the death benefit is given to the insured's estate or a trust established for a designated beneficiary other than the employer of the insured; or, (4) the death benefit is used by the estate, trust, beneficiary, or family member to purchase an equity, profit, or partnership interest in the employer.



"June 15, 2009 is the effective date for compliance with the IRS's new guidelines for employer-owned life insurance policies"

RED FLAGS RULES

The Red Flags Rules, requiring “financial institutions” and “creditors” to add written programs to prevent identity theft, have been delayed until August 1, 2009. Previous effective dates have been November 1, 2008, followed by an extension to May 1, 2009.

The Red Flags Rules program adopted by financial institutions and creditors must delineate methods for preventing and mitigating identity theft, which could include raising a “red flag” in response to suspicious or unusual account activity, such as fraud alerts from consumer reports. The program must be in written form.

Entities affected by Red Flags Rules
An individual or entity must comply with the Red Flags Rules if it falls under the Red Flags Rules definition of a “covered entity” AND sustains a “covered account.”

“Covered entities” defined
A “covered entity” includes those entities which are a “financial institution” and/or a “creditor.” A “financial institution” is an entity that “directly or indirectly holds a transaction account…belonging to a consumer.” A “creditor” is any entity that typically gives or arranges for credit extensions, continuation of credit, and/or credit renewals. The Red Flags Rules define “financial institutions” and “creditors” broadly, including not only obvious entities like banks and credit unions, but also “any other entity that holds a transaction account belonging to a consumer.”

“Covered accounts” defined
The definition of a “covered account” is also broad. Per the Red Flag Rules, a covered account is either a consumer-type account that allows the holder of the account to make transactions and/or payments. Or, a “covered account” may be an account with “a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identify theft, including financial, operational, compliance, reputation, or litigation risks.”

Businesses affected by Red Flag Rules
Businesses with these identify theft risks include more than the banking institutions. Professionals that do not require immediate payment, such as physicians, may be considered creditors for billing insurance before sending clients a bill. Employee benefit plans allowing plan loans or offering individual accounts are covered by the regulations as well.

Employer-sponsored plans affected by Red Flag Rules
The employer sponsoring a plan that includes a loan feature could be viewed as a creditor, given the broad definition of “creditor” under the Red Flags Rules. The more frequent and widespread plan loans are, the more likely a plan sponsor’s “creditor” status.

Plan sponsors with individual plan accounts for participants, such as most 401(k) plans, could be considered covered entities with covered accounts due to a reasonable foreseeable risk of identity theft from accounts. Even if a plan uses a third-party administrator, the plan sponsor may still be a covered entity holding covered accounts requiring a written identity theft program.

> “The Red Flags Rules define ‘financial institutions’ and ‘creditors’ broadly”

Written format requirements
For covered entities with covered accounts, the entity must create a written program identifying “red flags” of possible identity theft that apply to the covered accounts and how those red flags will be responded to. Appendix J of the Red Flag Rules regulations should be included in the program if applicable. The entity’s board of directors or senior management team must formally approve the program, and must be involved with implementing the plan and staff training. Entities should periodically update the plan. Fines will be issued for lack of compliance.

REQUIRED MINIMUM DISTRIBUTIONS MAY BE WAIVED FOR 2009

Required minimum distributions ("RMDs") rules typically require plan participants aged 70 ½ and older to take annual minimum distributions from their retirement accounts. The Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), temporarily suspends RMD rules and grants these plan participants the opportunity to skip minimum distributions for 2009. WRERA attempts to give retirement account balances time to rebound from losses by waiving any RMDs for 2009. These retirement accounts include funds held in §401(k) and §403 (b) plans, certain eligible §457(b) plans, and Individual Retirement Accounts ("IRAs"). RMDs currently must continue as scheduled in 2010.

Timing affected by RMD waivers

RMDs made to the beneficiary of a deceased participant may be delayed by a year. A typical five-year payout of the account will essentially become a six-year payout. Thus, if the applicable deceased participant died in 2006, and a waiver is elected by the beneficiary for 2009, the five year period ends in 2012, rather than 2011. Employees turning 70½ during 2009 will be able to delay their first RMD from April 1, 2010 to the end of 2010.

No requirement to waive 2009 RMDs

Account owners are not required to waive their 2009 RMDs. This choice may be more beneficial to the account owner for tax purposes. WRERA does not waive any requirements for minimum distributions in 2008, even if eligible individuals (retired employees and IRA owners turning 70/1/2 in 2008) delayed taking a 2008 RMD until April 1, 2009. If these individuals failed to take a full 2008 RMD by April 1, 2009, this failure could result in tax penalties.

Rollovers

Usually RMDs cannot be rolled over to another plan or IRA, but instead must be reported and taxed as income. Notice 2009-9 states that if a 2009 RMD is paid, that 2009 RMD is not treated as an RMD included as income and taxed. Instead, the 2009 RMD may be rolled over to an IRA within 60 days of the distribution if it otherwise it satisfies rollover requirements for eligible rollover distributions, without becoming subject to mandatory 20% income tax withholding. Some taxes may apply if the funds are to be rolled over into a Roth IRA, and the transaction must satisfy the rules applicable to converting a traditional IRA into a Roth IRA.

Reporting requirements

IRS Notice 2009-9 clarifies reporting requirements as a result of WRERA. RMD information required to be sent to IRA owners per Notice 2002-27, 2002-18 I.R.B. 814 does not need to be sent to IRA owners for 2009. A financial institution may send a statement showing the RMD amount that would have been required had there been no waiver of RMDs for 2009 with an explanation of the 2009 wavier. Or, if a financial institution sends a separate RMD statement to an IRA owner, that statement must show a zero (0) for RMD in 2009.

Limited guidance available

There is no explicit requirement in WRERA or current IRS guidance (Notice 2009-9) for employers to notify plan participants of their option to waive RMDs in 2009. In the absence of further IRS guidance, plans may choose to continue to make regular distribution in 2009 unless notified otherwise by participants, may stop all 2009 RMDs unless a participant elects to receive a distribution, or may make scheduled 2009 RMDs and not allow participants to elect to waive payments.

Employer action needed

While no notice requirements have yet been issued by the IRS, plans should immediately consider how to handle requests for RMD waivers. Should the plan allow participants to waive RMDs, an amendment to the plan document is required, usually no later than January 1, 2011. The plan must be operated as if the amendment were in effect beginning on the amendment's effective date and ending on December 21, 2009. A good faith amendment adopted before the January 1, 2011 deadline may help to protect the plan.

"WRERA temporarily suspends RMD rules and grants these plan participants the opportunity to skip minimum distributions for 2009"

REGULATION Z AND TRUTH IN LENDING ACT

The Federal Reserve Board recently issued final rules implementing the Truth in Lending Act ("TILA"), including an amendment to a regulation commonly known as "Regulation Z."

TILA's purpose is to encourage educated use of consumer credit. An amendment to the rules implementing TILA exempts plan loans taken from a section §401 (a)-qualified employer-sponsored retirement plan from Regulation Z's disclosure requirements.

Regulation Z demands lenders disclose particular key loan terms to borrowers, such as interest rates and finance charges, as well as costs for extensions of credit. Lenders are also required by Regulation Z to provide loan statements to borrowers periodically.

Before this exemption was added in the final rules, those plans granting participant loans were treated as lenders obligated to comply with Regulation Z's disclosure requirements.

The exemption does require that plan loan monies come from the fully-vested funds of the account of the plan participant receiving the loan.

This exemption will apply even if the employer-sponsored retirement plan is not subject to ERISA, according to the Federal Reserve Board's summary of the exemption.

There are several reasons the exemption was created. Plan loans differ from other types of credit issued by third parties. Plan loan costs cannot be equated with third-party loans, as plan participants pay the loan interest to themselves and not a third party. Any interest and payments from the participant taking the loan are reinvested in the participant's plan account, with no finance charges created by a third-party transaction. All plan administration fees, including participant loan fees, are already compulsory per current Department of Labor ("DOL") regulations.

The final regulations creating the exemption through amending Regulation Z become effective July 1, 2010. Employer plans should review their plan loan processes to capitalize on the exemption.

"The [TILA] amendment allows plan loans... to be exempt from Regulation Z's disclosure requirements"

FMLA RULING ALLOWS DISCHARGE WHILE ON LEAVE

The Family and Medical Leave Act (FMLA) governs the treatment of employees taking unpaid leave in certain family and medical circumstances. Typically, employees who take leave covered by FMLA must be permitted to return to the same position they had prior to taking leave, or a position equivalent to the one previously occupied.

A recent ruling issued from the 7th U.S. Circuit Court of Appeals addresses this issue in circumstances where information comes to light during an employee's FMLA leave which forms the foundation of a legitimate termination.

The 7th Circuit's ruling clarifies this requirement, holding that if an employer ascertains information during an employee's FMLA leave that would otherwise form the basis of a valid termination, the FMLA will not prevent an employer from taking adverse action against the employee.

In this case, an employee took FMLA temporary leave for a health condition. While the employee was on leave, employees temporarily covering the position uncovered several problems with the employee's work. An investigation revealed damaged goods and other issues, leading the employer to terminate the employee upon the employee's return.

The court affirmed an employer does not violate FMLA by not permitting the employee to return to his or her position after discovering facts that would allow for a termination.

IMMIGRATION SERVICES PROPOSES E-VERIFY RULE

The effective date for employer mandatory compliance with E-Verify has been delayed again from June 30, 2009, until September 8, 2009. The latest delay is the fourth in a series of delays to give adequate time to determine the impact of the regulations.

Employer use of E-Verify was formerly voluntary, until an executive order requiring employers use E-Verify to certify worker status was signed by President Bush in November 2008.

A system operated by the U.S. Citizenship and Immigration Services' ("USCIS"), E-Verify now must be used by organizations with federal contracts to certify existing employees (hired after November 6, 1986) and new hires are authorized to work in the U.S., beginning September 8, 2009.

E-Verify takes away incentives from employers to hire immigrant workers who may be hired for lower wages. Employers with a record of hiring unauthorized workers may lose federal contracts by continuing to hire workers without authorization to work in the U.S.

The E-Verify system is Internet-based, and will allow employers to verify existing employees and job applicants' social security numbers and other identifiers through federal database links. The system is free and allows employers to compare information provided by existing employees and job applicants on I-9 forms with over 500 million federal records.

To properly use the system, employers must enroll in E-Verify, if not already voluntarily enrolled. Contractors will be required to enroll in E-Verify within 30 days of being awarded a federal contact. Once enrolled, the employer has 90 days to verify work authorization of both new and existing employees. An additional 30 days is available to verify work authorization of existing employees newly assigned by an employer to work on a federal contract. Different timelines apply once an employer has already been enrolled.

The requirement for federal contractors to use E-Verify was initially to take effect January 15, 2009. The effective date was delayed to February 20, then again to May 21 and June 30, and now to September 8, 2009. The delays resulted in part from a lawsuit, challenging the rule by arguing the system may be unreliable, an added burden to employers, and a violation of worker privacy.

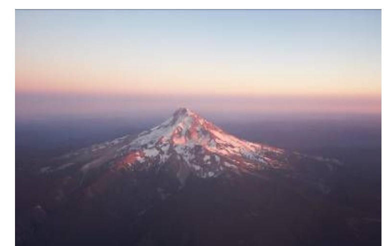
Currently, E-Verify's requirements affects both federal contractors (those with contracts exceeding $100,000) and subcontractors (those with contracts exceeding more than $3,000).

On May 22, 2009, the USCIS published a proposed rule change which could broaden the uses of E-Verify. The proposed rule summary states the E-Verify system gathers and uses information "to support monitoring and compliance activities for researching and managing misuse, abuse, discrimination, breach of privacy, and fraudulent use of information obtained" through E-Verify.

There is criticism from some groups concerning the proposed rule's defined uses of E-Verify. These groups argue that E-Verify negatively affects employer and job applicant privacy rights.

In light of the approaching effective date, employers with federal contracts over $100,000 or subcontracts over $3,000 should be prepared with policies and procedures to comply with E-Verify as soon as possible. An analysis should be made of employees to prepare for termination of those employees unauthorized to work in the U.S. Employers should also prepare by scouting out candidates to fill those potentially empty positions.

"Employers with federal contracts over $100,000 or subcontracts over $3,000 should be prepared with policies and procedures to comply with E-Verify as soon as possible"



PROTOTYPE 403(B) PLAN PROGRAM PROPOSED

In April 2009, the IRS issued a prototype revenue procedure and sample language for §403(b) plans in Notice 2009-34. The proposed §403(b) prototype program is intended to help institutions meet the written plan requirement of the final §403(b) regulations by the December 31, 2009 deadline. This written plan requirement is new to §403(b) plans and presents a heavy administrative burden.

While this new guidance refers only to prototype programs, Notice 2009-34 indicates guidance for approving individually-designed 403(b) plans will be made at a future, unspecified time.

Who uses §403(b) plans

Employers with §403(b) plans include nonprofit charitable organizations (which includes many hospitals), Indian tribal organizations, churches, and public education institutions (which includes universities and school districts).

Why adopt a prototype plan

Employers that have a relatively uncomplicated §403(b) plan may wish to adopt a prototype plan. Adopting a prototype plan eliminates the burden of drafting a §403(b) plan from scratch that satisfies all IRS plan qualification conditions. Use of a prototype plan is by no means required. Employers may craft their own §403(b) plan, with the added benefit of the new additional guidance and sample language from the IRS.

What a prototype plan consists of

Prototype plans have a basic plan document and an adoption agreement. The basic plan document is not customized to the particular plan; the adoption agreement does contain options to be chosen by the employer adopting the basic plan.

Determination letters issued by the IRS are required for a plan. A prototype plan sponsor usually presents the prototype plan materials with an application, requesting the IRS issue an opinion letter concerning the prototype plan materials. So long as those materials are successfully reviewed by the IRS, the employer using a prototype plan satisfies IRS requirements.

Caution in using prototype plans

The new IRS guidance is helpful in complying with the tax rules governing §403(b) plans, However, many §403(b) arrangements take advantage of an Employee Retirement Income Security Act (“ERISA”) exception based on minimal employer involvement in maintaining the §403(b) arrangement. Employers must keep their ERISA status in mind while making document changes.

Firm Description

The Cicotte Law Firm is located in Kennewick, WA, and represents employers in several states in all aspects of benefits law, handling diverse employment, labor, tax and corporate matters.

The Firm's practice covers all areas relating to employee benefits, including designing "defined contribution-style" health plans (HRAs, HSAs, & FSAs), assistance with COBRA, HIPAA, and EGTRRA, advising on fiduciary responsibilities, maintaining legal compliance with non-discrimination requirements, analyzing unusual benefit claims, representing employers in labor relations matters where pension or welfare benefits are involved, advising on the federal tax implications of complex benefits-related issues, and examining the ERISA status of compensatory arrangements.

Other practice areas vital to corporate function available at the Firm include corporate formation, corporate compliance, negotiations, mergers and acquisitions, SEC compliance, and HR liaison activities.

The Firm is also able to assist companies with licensing agreements, non-compete agreements, and non-disclosure agreements.

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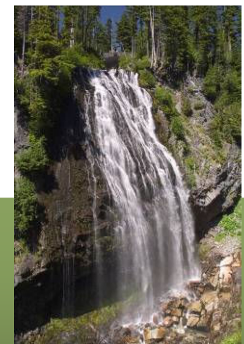

THE CICOTTE LAW FIRM LLC
ERISA AND EMPLOYEE BENEFITS + CORPORATE

Tel: 877.783.6699
509.783.6699
fax: 509.783.1166
info@cicottelaw.com

7025 W. Grandridge Blvd., Suite B2
Kennewick, WA 99336