

Current Regulatory and Legislative Developments Could Dramatically Affect Employment and Benefit Issues for Government Contractors

Employee Benefits Under DOE Contracts

DOE Request for Comments: On March 27, the Department of Energy ("DOE") published a request for public comments and recommendations in connection with its announced plan to deal with the increasing financial challenges of employee pension and health benefit reimbursement costs under DOE contracts. (72 Fed. Reg. 14266-14267 (March 27, 2007)). Comments are due by May 11.

Background:

In recent years the DOE has grown concerned about the rising costs and growing volatility of reimbursements for contractor employee pension and medical benefits. In 2006, benefit costs paid by the DOE reached approximately \$1.1 billion, a 226% increase since 2000. Particular areas of concern for the DOE include the rapidly rising costs of medical benefits, including the cost of medical benefits for retirees, and the continued costs of pension and medical benefits following site closures.

In April 2006, DOE announced a policy to curb increases in benefits and improve the predictability of costs. (DOE Notice 351.1, April 27, 2006). Under the policy, DOE would generally continue to reimburse contractors for the costs of current and retired employees' defined benefit pension plans and medical plans under existing contract requirements. Going forward, the DOE would reimburse contractors only for the costs of defined contribution plans, such as 401(k) plans, and medical benefit plans that are more competitive with market trends and costs.

This policy generated significant controversy, leading Energy Secretary Samuel Bodman to decide in June 2006 to delay the implementation of the policy for one year. The DOE is now soliciting advice prior to implementation of the new policy from the public and its key stakeholders regarding how best to handle the challenges it faces regarding employee pension and welfare benefits.

DOE Policy Goals:

The DOE has listed the following policy goals:

- Improve stewardship of taxpayer dollars by:
 - Mitigating the growing costs associated with benefit liabilities.
 - Moderating the volatility and improving the predictability of the DOE's cost reimbursement obligations.
 - Ensuring that costs for contractor employee pension and medical benefits are more consistent with market trends.
- Ensure fairness to incumbent contractor employees.
- Provide direction on the treatment of contractor post-retirement benefits at closure sites.

Next Steps:

- Those wishing to provide any comments and recommendations on these issues to the DOE must do so by May 11.
- All government contractors with DOE contracts should evaluate their employee pension and health benefits before the new policy becomes effective.

Pension Plan Funding Effective Date

The Pension Protection Act of 2006 ("PPA"), enacted August 2006, fundamentally reforms the rules requiring the funding of defined benefit pension plans. The new rules are generally effective in 2008. However, the PPA provides a delayed effective date for plans maintained by employers with revenue from defense contracts exceeding \$5 billion. The effective date for these plans is generally the earlier of (1) 2010 or (2) the effective date of revised rules to be issued by the Cost Accounting Standards Board to coordinate the standards for government reimbursable pension costs with the new pension funding rules. The delayed effective date is to provide time for the standards for government reimbursable pension costs to be updated to take into account the larger pension contributions expected to be required of employers under the new funding rules.

Penalty for Employment of Illegal Workers

The minimum wage bill passed by the House of Representatives in January (H.R. 2) provided only for an increase in the minimum wage. However, before passing the bill in February, the Senate added a number of provisions. One such provision would amend the immigration laws to bar an existing government contractor that hires illegal workers from receiving new contracts for up to 10 years, subject to possible waiver for national defense or security reasons. In addition, employers that are not currently government contractors and that hire illegal workers would be barred from receiving new government contracts for up to seven years.

This provision singles out Federal government contractors with respect to sanctions for hiring illegal workers and is being opposed by various industry trade groups.

Please contact any of the attorneys in our Employee Benefits and Executive Compensation Group if you have any questions or would like assistance in preparing comments to submit to the DOE.

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