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Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes - businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d) - on compensation and benefit-related issues.

Year-End Wrap-Up for Benefit Plans

As the end of 2010 draws near, we want to highlight some of the key year-end action items for benefit plan sponsors to consider before 2011.

RETIREMENT PLANS

Pension Protection Act of 2006 (PPA)

Retirement plans that have a calendar plan year may need to be amended by the end of 2010 to reflect certain PPA provisions. Although most employers amended plans last year for PPA, the amendment deadlines for the following items were extended to the end of 2010. Consequently, you should review your plan with your advisors to determine whether additional PPA amendments are needed to:

- Provide employees with freedom to divest publicly traded employer securities.
- Incorporate funding-based restrictions on benefits and benefit accruals provided under single employer defined benefit plans. The IRS has stated informally that it may extend this amendment deadline beyond 2010, but has not yet made an official announcement.
- Permit rollovers of death benefits by non-spouse beneficiaries to individual retirement accounts. Previously, under PPA, this was an optional plan provision; however, the Worker, Retiree, and Employer Recovery Act of 2009 (WREERA) made this a mandatory feature, which must be adopted by the end of 2010 if not done so already.
- Reflect special vesting and benefit accrual rules for cash balance and other hybrid plans.

Note: Governmental retirement plans have until the end of the 2011 plan year to adopt PPA amendments.

Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART)

By the end of 2010, retirement plans that have a calendar plan year may also need to make amendments to implement the HEART Act's various provisions, including:

- Payment of death benefits with respect to participants who die while performing qualified military service. This is a mandatory amendment.
- Amending the plan's definition of compensation for Internal Revenue Code Section 415 purposes to include differential wage payments tied to a participant's military service. This is a mandatory amendment that must be adopted, regardless of whether an employer makes such payments.
- Treating differential wage payments as plan compensation for purposes of contributions and benefit accruals. This is an optional amendment.

- Continuing benefit accruals for participants who die or become disabled during military service. This is an optional amendment.
- Applying a 6-month suspension of employee contributions for participants who receive plan distributions after qualified military service of over 30 days. Defined contribution plans have the option of treating participants who perform qualified military service of over 30 days as having severed from employment and being eligible for plan distributions. For plans that choose to offer such distributions, the 6-month suspension is mandatory and must be adopted by the end of 2010.
- Elimination of the December 31, 2007 expiration date for qualified reservist distributions. HEART eliminated the requirement under PPA that participants eligible for qualified reservist distributions had to be called to duty before December 31, 2007. Distributions are now extended to individuals called to duty after this date.

Note: Governmental retirement plans' HEART amendments are not due until the end of the 2012 plan year.

Additional Provisions

- In-plan Roth conversions were offered as a new optional plan feature under the Small Business Jobs Act of 2010 (SBJA), effective earlier this fall. Plans may allow direct rollover of amounts from a non-Roth account to a Roth account within the plan, instead of a rollover to a Roth IRA. The IRS is expected to provide a delayed period for adopting amendments related to the Roth conversion provisions; however, if a plan sponsor needs to add Roth contributions to implement the conversion feature, the plan must be amended accordingly by the end of this year, if the plan is a calendar year plan.
- Discretionary amendments (those that are not legally required) reflecting changes in the terms or design of a plan generally must be adopted by the end of the plan year in which they become effective, so be sure to add any such amendments to the list of year-end items.

HEALTH & WELFARE PLANS

Health Care Reform

There are a handful of year-end actions required by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (PPACA):

- Effective January 1, 2011, health flexible spending accounts, health savings accounts, and health reimbursement accounts will no longer be permitted to reimburse participants for over-the-counter medicines, unless the participant has a prescription for the medicine or the medicine is insulin. Starting in January, these plans must be operated to reflect these new restrictions, even though the deadline for adopting the corresponding plan amendment has been extended to June 30, 2011.
- Also effective January 1, 2011, health plans must allow participants to cover their adult children up to age 26 (although there are certain nuances that apply to health plans that elected to be grandfathered under PPACA). Plans could have adopted this provision early, allowing adult children to remain covered in 2010. Any plan that adopted the provision early must be amended before the end of the year if it has a calendar plan year.

Mental Health Parity

- The Mental Health Parity and Addiction Equity Act became effective as of January 1, 2010 for calendar year plans. By the end of this year, health plans with a calendar plan year must comply with applicable regulations that were issued earlier this year.

State Children's Health Insurance Program

- By January 1, 2011, group health plans must distribute state children's health insurance program (CHIP) notices. Many plans sent this notice with their open enrollment materials, but any plan that did not do so should plan to distribute the notice by the end of 2010. A sample CHIP notice can be found at <http://www.dol.gov/ebsa/pdf/chipmodelnotice.pdf>.

Upcoming Health and Welfare Plan Items

- In 2011, medical plans, wrap plans, and summary plan descriptions will need to be updated for health care reform changes. For example, plans will need to be amended for the new coverage requirements for adult children, for mandatory market reform changes, for the new internal claims and external review procedures, and to include PPACA-required statements of grandfathered plan status, as applicable.
- In 2010, proposed regulations were issued under HIPAA. These regulations expanded the definition of "business associates," applied the requirements of HIPAA directly to business associates, created new rules surrounding marketing of and access to protected health information, and added requirements to entities' Notice of Privacy Practices. While these regulations are currently in proposed form, they will likely be finalized in 2011.
- Under PPACA, employers must report the value of health care coverage on each employee's Form W-2. The effective date of this requirement has been deferred, and reporting does not have to begin until 2012. Additional guidance on the reporting obligation is expected.
- New COBRA regulations are expected next year regarding the calculation of COBRA premiums.

EXECUTIVE COMPENSATION

- Any company with plans or agreements providing nonqualified deferred compensation that do not address Internal Revenue Code Section 409A at all, or that may be out of compliance with Section 409A, may be able to take advantage of a small window of time, before the end of 2010, for making penalty-free corrections to plan documents. Eligible corrections will need to be made by the end of this year. See our recent alert for additional details: [Year End Deadline for Penalty-Free Section 409A Corrections](#).

The members of Venable's [Employee Benefits & Executive Compensation](#) team are available to help you implement any year-end amendment or plan design changes.

Please contact any of the attorneys in our [Employee Benefits & Executive Compensation](#) group if you have questions regarding this alert.

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