

SEYFARTH SHAW MANAGEMENT ALERT

December 2005

Employee Benefits Year-End Actions To Be Taken

The following is a brief reminder of those actions that companies and benefit plans may be required to take before year end.

Links to our prior guidance on these topics are located at the end of this Management Alert.

Welfare Plans

Flex Account Use It or Lose It Extension: Cafeteria plans that intend to take advantage of the grace period for flexible spending accounts must be amended by December 31, 2005 in order to do so. See our May 18, 2005 One Minute Memo for more information. Employers should also be aware that the IRS issued additional guidance last week clarifying the relationship between the grace period and an employee's eligibility to participate in a Health Savings Account.

HIPAA Portability & Creditable Coverage: New regulations issued under HIPAA have added coverage under a State Children's Health Insurance Program and coverage under a public health plan of a foreign country as creditable coverage. The regulations also require that certificates of creditable coverage provided to former medical plan participants beginning January 1, 2006 contain an educational statement. Plans should be amended by December 31, 2005 to include the additional types of creditable coverage and new model certificate of creditable coverage must be used beginning no later than January 1, 2006. See our March 2005 Management Alert for more information.

Other HIPAA Portability Issues: Under the special enrollment rules, group health plans must allow an individual to enroll in the plan if the individual loses other health coverage. The HIPAA regulations expanded what constitutes a loss of coverage. Plans should be amended by December 31, 2005 to allow enrollment when an individual loses coverage under this expanded interpretation. The HIPAA regulations also expanded the dental and vision benefits that are not subject to the portability requirements.

Non-Qualified Deferred Compensation Arrangements

Internal Revenue Code Section 409A: Although most compliance amendments need not be made until December 31, 2006, the following actions must be taken by December 31, 2005: (i) any amendments and/or elections to terminate or unwind non-qualified deferred compensation arrangements, and the payout of those arrangements, (ii) any elections with respect to payments that would otherwise be made in 2006, and (iii) the exercise of options or other stock rights that do not qualify under §409A, such as discounted options. Alternatively, if discounted options are to be amended to increase the exercise price and the employee is to be compensated for the increase, the compensation may need to be paid by December 31, 2005. See our October 2005 Management Alert for more information.

Qualified Retirement Plans

Cash Outs/Automatic Rollovers: Effective March 28, 2005, tax-qualified retirement plans that mandatorily "cash out" vested accounts of \$5,000 or less must automatically roll over those accounts into an individual retirement account if the account is greater than \$1,000, unless the participant elects otherwise. Plans must be amended by the later of December 31, 2005, or the filing date for the employer's tax return that includes March 28, 2005, to either provide for such automatic rollover or to reduce mandatory cashouts to those vested accounts with \$1,000 or less. Note that the original deadline for making the amendment was the last day of the plan year that included March 28, 2005, so the extended deadline provides a second chance for plans that failed to make the amendment by the end of their 2005 plan year. For more information, see our January 2005 Management Alert on this subject.

Retroactive Annuity Starting Date (RASD): Final RASD regulations were effective January 1, 2004. Any defined benefit plan that has a RASD provision that does not comply with the final regulations must be amended by

the end of the 2005 plan year, which in the case of a calendar year plan is December 31, 2005. A calendar year plan that has paid retroactive benefits in 2004 or 2005 must be amended by December 31, 2005, to comply with the RASD regulations. For more information, see our December 2005 Management Alert on this subject.

401(k) Plans: New 401(k) rules were issued and are generally effective as of January 1, 2006. However, these regulations can be adopted for any plan year that ends after December 29, 2004, provided that any such amendment adopting the regulations prior to January 1, 2006 must be made no later than the end of the first plan year to which the regulations are to apply. For example, calendar year plans that have been applying the new regulations, such as the more liberal hardship withdrawal rules, during 2005 need to adopt an amendment by December 31, 2005.

Links To Our Prior Guidance

IRS Eases "Use It or Lose It" Rule for Flex Accounts - 05/18/2005

http://www.seyfarth.com/index.cfm/fuseaction/news_pub.news_pub_detail/object_id/457c56fe-ecdc-4aba-ac52-38effab87828/IRSEasesUseItorLoseItRuleforFlexAccounts.cfm

HIPAA Portability Revisited - 03/02/2005

http://www.seyfarth.com/index.cfm/fuseaction/news_pub.news_pub_detail/object_id/0de516f2-afe9-4476-80d8-d89822e09c47/HIPAAPortabilityRevisited.cfm

New IRS Guidance On Deferred Compensation - 10/17/2005

http://www.seyfarth.com/index.cfm/fuseaction/news_pub.news_pub_detail/object_id/3ffb4dc7-9e85-429a-93ac-b221913fd75e/NewIRSGuidanceOnDeferredCompensation.cfm

Automatic Rollovers: Challenges for Compliance - 01/19/2005

http://www.seyfarth.com/index.cfm/fuseaction/news_pub.news_pub_detail/object_id/ebf6c1c2-7f7e-4d15-a9d3-14f52ceec45d/AutomaticRolloversChallengesforCompliance.cfm

IRS Extends Deadlines for Amending Qualified Retirement Plans - 12/08/2005

http://www.seyfarth.com/index.cfm/fuseaction/news_pub.news_pub_detail/object_id/c3075623-7dea-452b-9be8-ad529c5af2ec/IRSExtendsDeadlinesforAmendingQualifiedRetirementPlans.cfm

If you have any questions concerning these year-end actions, or their applicability to your plans, please contact the Seyfarth Shaw LLP attorney with whom you work or any Employee Benefits attorney on the website at www.seyfarth.com.

This newsletter is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact the firm's Employee Benefits Practice Group.

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