AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys at Law

July 23, 2008

EMPLOYEE BENEFITS ALERT

DEADLINE FOR COMPLYING WITH FINAL SECTION 409A REGULATIONS IS RAPIDLY APPROACHING

All nonqualified deferred compensation arrangements **must be amended on or before December 31, 2008**, to comply with the final regulations issued under Internal Revenue Code Section 409A. Section 409A is the 2004 tax law that dramatically changed the tax treatment of nonqualified deferred compensation. Complying with the December 31 deadline is more challenging than it initially appeared because "nonqualified deferred compensation" is defined very broadly and may include, but is not limited to, the following arrangements–

- traditional salary and bonus deferral arrangements, including many deferred compensation plans established for the benefit of investment fund managers
- supplemental executive retirement plans (SERP)
- employment agreements
- severance and separation pay plans or agreements
- change in control agreements
- certain split-dollar life insurance arrangements
- phantom stock (including restricted stock units)
- phantom carried interest plans commonly maintained by private equity fund managers
- stock options and stock appreciation rights that have an exercise price below grant date fair market value.

If the nonqualified deferred compensation arrangement documentation does not comply by the December 31, 2008 amendment deadline, participants in that arrangement may be subject to immediate taxation and a 20 percent penalty tax plus possible interest penalties.

So far, the Internal Revenue Service has indicated that it is not inclined to extend the deadline beyond December 31, 2008. Accordingly, it is critical that employers immediately identify and carefully review each of their nonqualified deferred compensation arrangements to ensure that any amendments required by the final Section 409A regulations are made by the December 31, 2008 deadline.

Prompt action is recommended, as many agreements may require consideration of business decisions, board action or other corporate governance procedures, and negotiation with affected participants. Delay may result in advisers, such as attorneys, actuaries, accountants, compensation consultants and record keepers, being subject to constraints on their ability to respond in a timely fashion.

CONTACT INFORMATION

If you have any questions regarding this alert – or Section 409A generally – please contact:

Bruce E. Simonetti .... 212.872.8023 ....bsimonetti@akingump.com .... New York
Robin M. Schachter .... 310.728.3363 ....rschachter@akingump.com .... Los Angeles
Jessica Cherry .... 212.872.7437 ....jcherry@akingump.com .... New York
Austin S. Lilling .... 212.872.1007 ....alilling@akingump.com .... New York

Austin Beijing Dallas Houston London Los Angeles Moscow
New York Philadelphia San Antonio San Francisco Silicon Valley Taipei Washington, D.C.