

EMPLOYEE BENEFITS ALERT

IMMEDIATE ACTION REQUIRED: DEADLINE FOR COMPLYING WITH FINAL SECTION 409A REGULATIONS IS RAPIDLY APPROACHING



All nonqualified deferred compensation arrangements must be amended **on or before December 31, 2007**, 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
- supplemental executive retirement plans (SERPs)
- 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), and
- stock options and stock appreciation rights that have an exercise price below grant date fair market value.

If a nonqualified deferred compensation arrangement does not comply by the December 31, 2007, amendment deadline, participants in that arrangement may be subject to immediate taxation and a 20 percent penalty tax plus possible interest penalties. The IRS has indicated that it is not inclined to extend the deadline beyond December 31, 2007. The final Section 409A regulations were published on April 17, 2007, and included many substantive changes from prior proposed regulations and notices. 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, 2007, deadline, even if amendments were previously made based on the proposed

regulations. 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 advisors, 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

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