

EMPLOYEE BENEFITS

Alert

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

2009 Year End Benefits Update

November 20, 2009

The end of the year is fast approaching. And your Bass, Berry & Sims PLC employee benefits attorneys would like to make sure nothing gets overlooked during this often hectic time of year. Below are some of the major items that need to be addressed by pension and welfare plans before December 31, 2009. The action items are identified by the type of plan to which they are applicable.

Year End Items for Retirement Plans

All Qualified Plans

Provide Diversification Notice for Company Stock if plan requires investment in company stock. Must be provided at least 30 days prior to the date a participant is eligible to diversify investments.

Adopt Pension Protection Act of 2006 (PPA) amendments. The PPA requires several changes and permits some discretionary changes to be made.

Determination letter filings are due by January 31, 2010, for individually designed plans with EIN's that end in a 4 or 9.

Comply with the HEART Act which deals with participants serving on military duty and covers increased death benefits, benefit accruals and differential wage payments. Some mandatory provisions were effective January 1, 2007 and the plan must be administered accordingly. Plan amendments must be made by the end of 2010.

401(k) Plans

Provide annual automatic contribution notice if the plan has an automatic contribution feature. Must be provided at least 30 days prior to the beginning of the plan year (December 1).

Provide safe-harbor notice if the plan is a safe-harbor plan that does not have to conduct discrimination testing. Must be provided at least 30 days prior to the beginning of the plan year (December 1).

Provide qualified default investment alternative (QDIA) notice if the plan has a QDIA investment option (e.g., a target retirement date fund) as its default investment fund. Must be provided at least 30 days prior to the beginning of the plan year (December 1).

Distribute Required Minimum Distributions (generally for participants who are retired and age 70½ or older) by year end except for those delayed to April 1, 2010. Does not apply if the employer has waived required minimum distributions for 2009.

Process corrective distributions for failed discrimination testing in 2008 (10% excise tax applies if correction is made after March 15, 2009). Applies if the plan failed discrimination testing in 2008 and made a corrective distribution to correct the failure.

Defined Contribution Plans

Provide qualified default investment alternative (QDIA) notice if the plan has a QDIA investment option (e.g., a target retirement date fund) as its default investment fund. Must be provided at least 30 days prior to the beginning of the plan year (December 1).

Distribute Required Minimum Distributions (generally for participants who are retired and age 70½ or older) by year end except for those delayed to April 1, 2010. Does not apply if the employer has waived required minimum distributions for 2009.

Defined Benefit Plans

Ask your actuary about AFTAP (Adjusted Funding Target Attainment Percentage) levels for the first quarter of 2010. If a plan's AFTAP is less than 80%, plan restrictions on payment of benefits could go into effect and require a written notice to be sent to employees within 30 days of the date AFTAP dropped below 80%.

Provide annual funding notices within 120 days of end of plan year if plan has more than 100 participants.

Provide benefits statements for the 2009 plan year to participants if the alternative notice requirements were not used. Statements must be provided within 45 days of the end of the plan year.

403(b) Plans

Adopt a written plan document by December 31, 2009. Certain types of plans may be granted relief from the deadline.

Year End Items for Health and Welfare Plans

Michelle's Law -- Plans that provide dependent child coverage to full-time college students must continue coverage for up to one year for a student who would otherwise lose coverage due to a medically necessary leave of absence. Plan documents, SPDs, and enrollment materials should be amended by the end of 2009.

Mental Health Parity (MHSPA) -- If a plan provides mental health and/or substance abuse benefits, these benefits may not be subject to more restrictive financial arrangements or treatment limits than the plan limits that apply to medical/surgical benefits. Plan documents, SPDs, and enrollment materials should be reviewed and amended as necessary. Claims procedures and related documents may need to be updated or modified.

CHIPRA (Children's Health Insurance Program Reauthorization Act of 2009) -- States may offer premium assistance for eligible children to participate in employer-sponsored group health plans. New special enrollment rights apply upon eligibility for assistance and upon any loss of eligibility for Medicaid or state child health coverage. SPDs, enrollment materials and Notices of Special Enrollment Rights should be amended to describe the new rights.

GINA (Genetic Information Non-Discrimination Act) -- Plans may not use or request family medical history or other "genetic information" (i) prior to or in connection with plan enrollment or (ii) at any time in order to calculate payments or eligibility for particular payment arrangements (e.g., reduced premiums, etc.). Plan documents and administrative procedures will need to be reviewed for compliance.

HEROES Act -- A cafeteria plan that includes a health FSA may (but is not required to) permit a reservist who is called to active duty for at least 180 days to receive a distribution of the reservist's account balance. Necessary plan amendments should be drafted by the end of 2009.

HITECH -- The privacy and security requirements of HIPAA now apply directly to business associates of health plans and other HIPAA-covered entities. Business associate agreements should be amended no later than February 17, 2010 to reflect business associates' new responsibilities. Privacy policies and procedures will also need to be amended to reflect new "breach notification" rules added by HITECH.

COBRA Subsidy -- The American Recovery and Reinvestment Act of 2009 (ARRA) previously provided for a temporary subsidy towards the cost of COBRA premiums for eligible individuals who involuntarily terminated employment (and became COBRA eligible) between September 1, 2008 and December 31, 2009. Legislation has been proposed to extend the subsidy to certain groups of people terminated after December 31, 2009.

Medicare Changes -- The Medicare, Medicaid, and SCHIP Extension Act of 2007 added new mandatory reporting requirements for group health plans. Claims administrators of the plan must collect certain information from plan participants and report this information to the Center for Medicare & Medicaid Services (CMS), including Social Security numbers of certain plan participants and Health Insurance Claim Numbers (HICN) of Medicare enrollees.

Cafeteria Plan Regulations -- The IRS is expected to soon release final regulations governing Code Section 125 plans. The regulations are expected to include revised rules governing use of electronic payment cards for health flexible spending accounts and employers must develop annual non-discrimination testing procedures. All cafeteria plans will need to be put into writing (if not already in such form) and revised for compliance.

If you have a question about any of the above items regarding Pension or Welfare plans please feel free to contact any of the Bass, Berry & Sims PLC employee benefits attorneys listed below.

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Our Nashville office is moving.

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