

## EMPLOYEE BENEFITS ALERT

---

### **409A REGULATIONS REQUIRE PLAN AMENDMENTS BY YEAR END**

Last year, we notified you that the Internal Revenue Service released final regulations under Internal Revenue Code Section 409A and that documentary compliance was required by the end of 2007. We subsequently reported, however, that the IRS extended the 409A compliance deadline to December 31, 2008.

As December inches closer, we are confident that the IRS will not further extend the 409A compliance deadline. Accordingly, we urge you to review all arrangements that provide for deferrals of compensation (as described below) to insure that they are 409A compliant.

Code section 409A provides that unless certain requirements are met, some types of deferred compensation may be includible in an employee's gross income even though not yet received. In addition, an employee whose arrangement violates these rules must pay interest on any unpaid taxes, plus 20 percent of the compensation that is required to be included in gross income. A violation of Code section 409A will raise tax reporting and withholding issues for employers.

Code section 409A applies to any arrangement that provides for the deferral of compensation (*i.e.*, a right to compensation that is or may be payable in a later year), other than tax-qualified plans and bona fide vacation, sick, compensatory, disability, or death benefit plans. Arrangements subject to Code section 409A include severance pay, bonuses, change-in-control agreements, and plans linked to tax-qualified plans. Employment contracts containing these provisions are also subject to Code section 409A.

In addition to requiring that such arrangements be in writing, the regulations prohibit distributions except upon the occurrence of certain specified events. The regulations include special rules regarding the timing of deferral elections and subsequent elections that delay or change the form of benefit payments. In addition, the regulations require a delay in distributions to key employees of publicly traded companies.

Nonqualified deferred compensation plans and employment contracts must be amended to comply with Code section 409A no later than December 31, 2008.

*If you have any questions about this alert or any other issues relating to employee benefits, please contact **Kathryn English** at 412.566.1226, **Michael Herzog** at 412.566.6130, **Sandra Mihok** at 412.566.1903, **Brandon Richards** at 412.566.1263, or **Paul Yenerall** at 412.566.1944.*