

ERISA PLANS UPDATE: TIMELY REMINDERS REGARDING RETIREMENT PLANS

Failure to comply with the qualification requirements that govern retirement plans may result in cumbersome and costly correction methods, or worse, disqualification. This Update is designed to briefly highlight provisions that may require the attention of your Plan's Administrator and can serve as an abbreviated compliance checklist. For more information about this Update, contact your Brown Rudnick attorney or any of the individual attorneys listed at the end of this Update.

Timely Deposit of 401(k) Deferrals:

In February 2009, the DOL proposed a seven-day safe harbor for small employers with fewer than 100 plan participants. Small employers will not be found in violation if they remit the employee contributions within seven (7) business days of receiving the funds. There's no similar safe harbor for larger businesses. The 7-day safe-harbor is similarly applicable to participant loan repayments.

Even though the regulations require large employers to transmit employee contributions to retirement plans as soon as those funds can reasonably be segregated from the general assets of the employer, but no later than the 15th business day of the month following the month in which contributions are received or withheld by the employer, the DOL's enforcement position has been, generally, that contributions must be remitted no more than 3-4 business days after withholding. However, in many instances, the DOL will require 401(k) deposits to be remitted in one business day.



ALERT

Required Minimum Distribution Suspension:

The Worker, Retiree and Employer Recovery Act of 2008 provided a one-year suspension of the required minimum distribution (“RMD”) rules for 2009. Specifically, no minimum distribution is required for calendar year 2009 from Individual Retirement Accounts or defined contribution retirement plans (such as Section 401(k) plans). The next RMD will be for calendar year 2010. Plans are required to adopt an amendment effecting the suspension prior to the last day of the plan year which begins on or after January 1, 2011 (i.e., December 31, 2011 for calendar year plans). Plans that have implemented the suspension must at all times be in operational compliance with the regulations, whether or not an amendment has yet been adopted.

Determination Letter Program – 5-year Cycle:

IRS Revenue Procedure 2007-44 – Rulings and determination letters has established a five-year system of staggered cyclical remedial amendment periods for every individually designed qualified plan (e.g., 401(k) plans). Plan sponsors need to apply only once every five years within their applicable 5-year remedial amendment cycle for an opinion, advisory, or determination letter. The 5-year remedial amendment cycle is determined by looking at the last digit of the plan sponsor's EIN.

5-Year Remedial Amendment Cycle	Last Digit of Plan Sponsor's EIN	Initial Submission Period Ends	Next Submission Period Ends
A	1 or 6	1/31/2007	1/31/2012
B	2 or 7	1/31/2008	1/31/2013
C	3 or 8	1/31/2009	1/31/2014
D	4 or 9	1/31/2010	1/31/2015
E	5 or 0	1/31/2011	1/31/2016

As noted in the chart above, cycle D filers are currently due. We are prepared to assist you in the filing process.

Electronic Filing of Form 5500:

Effective for plan years beginning on or after January 1, 2009, employers will be required to file Form 5500 electronically under the ERISA Filing Acceptance System (“EFAST”). As a practical matter these filings will commence in July 2010 for calendar year-end plans. Further guidance will be forthcoming from the DOL.

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