

## *It's Not Your Same Old Same Old . . .*

### New, Proposed Rules Alter Benefit Programs, Administration

#### *IRS Updates Cafeteria Plans*

**T**HE IRS has applied a fresh coat of paint to the current cafeteria plan regulations and guidance, some of which date back to 1984. "The biggest changes will be an increased focus by the IRS on the design, operation, and nondiscrimination tests associated with all employers' cafeteria plans," says Morgan Lewis attorney Andy Anderson. It is important that employers now ensure that "their cafeteria plan benefits are equally available at an identical cost to all employees."

The revisions clarify that cafeteria plans are the only method of nontaxable benefits where employees are allowed to choose between taxable compensation and nontaxable benefits. The proposal also incorporates recent changes in law regarding adoption assistance programs, dependent definitions, health savings accounts, and qualified HSA distributions from health flexible spending accounts. In addition, it clarifies previously issued regulations on FSAs and maintains the "use-it-or-lose-it" rule, the 12-month plan year,



and restrictions on changing plan elections mid-year. The new regulations are expected to apply to plan years beginning on or after January 1, 2009. Until then, employers may rely on either the proposed regulations or the previous guidance. ■

#### *DHS Issues New Immigration Rules*

THE DEPARTMENT of Homeland Security (DHS) has published a final rule establishing safe harbor procedures for employers who receive a Social Security Administration (SSA) mismatch letter or notice from DHS that an individual lacks authorization to work.

The SSA routinely sends out "no-match" letters to employers with employees whose Social Security numbers do not match government records. The new "no-match" rule will take effect Sept. 14, 2007. Mismatch letters for 2007 W-2 returns will be distributed to employers beginning next Spring.

Under the new rules, employers will be in violation of federal immigration laws if they ignore the "no-match" letters and fail to take corrective steps within 90 days, according to the Society for Human *(Continued on back)*

#### *Tipping Point*

### Post-Retiree Benefits Help Retain Aging Workforce

WITHIN THE next decade, the U.S. workplace will be transformed with an explosion of flexible work schedules and a host of technologies that will make work tasks easier. Why? A boatload of middle-age workers!

By 2020, there will be more age 55-plus workers grinding away than at any other time in our history. As a result, labor experts foresee a rush by

the nation's businesses to accommodate the aging workforce.



*Talent*, a book about the impending shortage of workers. Even though working moms and dads have been hitting their heads against the wall for years trying to get flexible schedules to balance work and family, it won't be their efforts that finally get corporate America on the bandwagon. The tipping point is the aging workforce. *(Continued on back)*

No one knows for sure how many workers will take their Social Security checks and run, but surveys suggest that many will need to continue working. "It's like a train wreck in slow motion," says Tamara Erickson, co-author of *Workforce Crisis: How to Beat the Coming Shortage of Skills and*

## Tipping Point... (Continued from front)

In order to attract and keep experienced workers, more employers plan to expand their retiree benefit offerings, according to the 5<sup>th</sup> annual *MetLife Study of Employee Benefit Trends*. While retiree benefits offerings are more prevalent at the largest employers, smaller employers say they will expand the amount of benefits they provide to their retired workers.

However, Congress may want to consider making changes to laws, programs, and policies that impact retirement decisions in order to provide a cohesive message that encourages employees to work longer, according to a recent report from the Government Accountability Office (GAO).

Federal policies offer mixed signals about when to retire. Medicare's age-65 eligibility requirement is a strong incentive for those without retiree health insurance to wait until then to retire. Meanwhile, federal tax policy creates incentives to retire earlier. For example, tax laws allow workers to begin withdrawing funds from IRAs and pension plans starting at age 59-1/2 without penalty. ERISA allows employer-sponsored pension plans to set earlier eligibility ages without tax penalties.

"As individuals continue to shoulder greater responsibility for their health and retirement, they'll be looking for employers with the tools, education, and benefits policy that will provide them with meaningful risk protection for their personal situations," says Dr. Ronald Leopold, vice president, MetLife Employer Sponsored Benefits. ■



## Not Your Same Old Same Old... (Continued from front)

Resource Management (SHRM). Corrective steps will include checking employment records for clerical errors and confirming that employee information matches government records. Employers that make "good faith" efforts to solve any problems will not be held liable, according to DHS officials. However, the new rules will require employers to terminate workers whose "no-match" problems with Social Security Numbers cannot be resolved in 90 days. ■

### IRS Releases Final 403(b) Regulations

MORE THAN 40 years after the release of the first 403(b) regulations, the 403(b) plan industry now has an up-to-date body of regulations for clearer guidance. Because the final regulations will affect every existing 403(b) plan in some way, the IRS has given 403(b) plan administrators and plan providers until Dec. 31, 2008 to prepare for changes.

The new regulations diminish the extent to which 403(b) arrangements differ from 401(k)s and 457(b) plans. As a result, several major changes will take effect, including modifications to ERISA, the Tax Reform Act of 1986, the Small Business Job Protection Act of 1996, the Economic Growth and Tax Relief Reconciliation Act of 2001, and the Pension Protection Act of 2006.

For the first time, it is confirmed that an employer may terminate a 403(b) plan at any time for replacement with a 401(k) or 457(b) plan. Roth contributions may be made to a 403(b) plan. ■

### Pension Penalty: Diversify or Else!

THE DEPARTMENT of Labor can fine companies up to \$100/day if they do not notify workers of their right to diversify company-sponsored retirement plans beginning October 9. This includes notifying workers they can divest the company's own stock given by their employers as a 401(k) plan matching contribution and reinvest the proceeds into other investment options offered by their plans. To comply with the rule, plan administrators have 30 days to notify employees of their rights before they become eligible for the plan. ■

### Congress May Expand FMLA

DESPITE RESISTANCE from business groups, the Democratic-led Congress appears to be growing sympathetic to the idea of providing workers more time off to tend to their families. Before leaving Washington for its August recess, the Senate approved a plan that would allow the relatives of wounded soldiers to take up to 26 weeks of unpaid leave to care for them. If approved by the full Congress, it would mark the first expansion of the landmark Family and Medical Leave Act since it took effect in August 1993. ■



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