



The Ferenczy Flash

FROM THE LAW OFFICES OF *Ilene H. Ferenczy, LLC*

The Latest Word in Employee Benefits . . .

QUICK ACTION CAN SAVE EXECUTIVES FROM CODE SECTION 409A PENALTIES

The IRS just released new guidance permitting employers to correct deferred compensation arrangements that would otherwise subject executives and other highly valued employees to the large penalties under Code Section 409A. In the new guidance, the IRS provides special relief from penalties if employers correct plan documents by the end of 2010.

The IRS designed the correction program to encourage employers and participants in nonqualified deferred compensation plans to review their plan documents for compliance with Section 409A and to correct errors promptly. Employers that fix provisions before participants become entitled to prohibited distributions can reduce taxes and penalties by 50 to 75 percent. Employers that complete corrections within 2010 can completely eliminate current taxation and all penalties under a special relief program.

To obtain the maximum benefits possible under the program, employers should review employment agreements and other arrangements that provide for the deferral of compensation (other than formal, tax-protected qualified retirement plans) for the common document errors that can be corrected under the new program. The guidance, issued in IRS Notice 2010-6, serves as a useful checklist of provisions that should not be used in such plans and arrangements. The sooner employers act, the better because no relief is available once a distribution is actually payable under the plan.

If you have questions about Section 409A or this program, please call or e-mail Matt Cristy at (404) 320-1100, ext. 110 (matt@ihflaw.com) or Ilene Ferenczy at (404) 320-1100, ext. 102 (Ilene@ihflaw.com).

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