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INDUSTRY SPOTLIGHT: DOL ISSUES FINAL REGULATIONS ON QDIAs

On October 24th, 2007, the Department of Labor (DOL) issued the long awaited Qualified Default Investment Alternatives (QDIA) final regulations. These regs retain many of the proposed provisions, but also offer a few new opportunities. Safe harbor relief is available to fiduciaries of participant-directed 401(k) plans where certain conditions are met. This safe harbor becomes effective December 24th 2007 (or 60 days following issuance of the regs).

The categories of investments qualifying for long-term relief are: lifecycle funds, risk-based portfolios, and investment management services. A key component of qualification is the ongoing fiduciary responsibility to select and monitor these funds based on objective analysis. Also, for plans utilizing the risk-based portfolio QDIA, the plan must determine the fund's initial appropriateness and whether it continues to be appropriate on an ongoing basis for the plan's participant base (average age being the key component). Additional conditions must be met regarding the timing of participant notifications, fund restrictions and penalties, provision of materials to participants, and ability to redirect investments.

As expected, capital preservation or stable value investments were not included. The regulations do, however, allow their

use as QDIAs under specific limited circumstances.

Please note that this is a brief overview of the 60+ page regulations and preamble issued by the DOL; they are still under examination and other important details may need to be identified.

PROMOTING HEALTH IN THE WORKPLACE DURING THE NEW YEAR

As employees return to work after the start of the new year, many of them will be working on their resolutions to lose weight, stop smoking, or adopt a healthier lifestyle overall. This makes the beginning of the year a great time to start encouraging employees to live healthier lives. Elite Wellness, a corporate wellness company, suggests the following steps for promoting health in the workplace:

1. **Get management involved** – This creates a trickle down effect, showing all employees that health and wellness are important to everyone.
 2. **Establish a wellness leader and offer training** – Having a well-respected co-worker lead the wellness initiatives can motivate other employees.
 3. **Gauge employee interest** – Find out what kind of help employees need and want in order to better structure wellness programs.
 4. **Conduct health screenings** – Hard data will help individual employees
5. **Start a kick-off campaign** – The new year is the perfect time to build excitement about a new wellness program.
 6. **Hold a nutrition day** – Bring in a chef to teach employees how to create healthy meals, or host a lunch-and-learn about nutrition and provide a healthy lunch.
 7. **Create a resource center** – Build a company library with books and magazines about healthy living or workout DVDs that employees can check out for free.
 8. **Communicate on health** – A company newsletter focusing on health and wellness can provide useful information, healthy recipes, and employee success stories.
 9. **Change company culture** – Create an environment conducive to health by stocking company vending machines with healthy choices and eliminating unhealthy options, change to a non-smoking worksite, sponsor fitness activities, or subsidized gym memberships.
 10. **Explore wellness outside of work** – Get involved with health-related community events, and encourage employees to volunteer or participate.

Source: Elite Wellness USA, LLC. "Ten Ways to Promote Health in the Workplace" October, 2007



HR REMINDERS FOR 2008

OSHA Posting Reminder

As you prepare for the start of a new year, don't forget that you must have your OSHA Summary Form 300A prepared and posted. This form summarizes the entries from the Form 300 Log at the end of the year and then is posted from February 1 to April 30 of the following year. The Annual Summary must also be certified by an executive of your organization. You can obtain a form at: <http://www.osha.gov/recordkeeping/>.

It is important to note that some organizations are exempt from these filing and posting requirements. OSHA exempts smaller employers with 10 or fewer employees from most requirements. OSHA also exempts certain retail, service, finance, insurance, and real estate industries which are considered "low hazard" from the recordkeeping requirements unless OSHA specifically informs the employer that they must comply. OSHA uses the Standard Industrial Classification (SIC) Code to determine which establishments must keep records. You can search for SIC Codes by keywords or your 4-digit SIC to retrieve descriptive information on OSHA's website at <http://www.osha.gov/oshstats/sicser.html>.

The Revised I-9 Form

Employers are now required to use the new Employment Eligibility Verification I-9 Form. The utilization of the revised form became effective December 26, 2007. The previous notice by USCIS stated that employers could use the new form; however, they were not required. In the new Federal Register dated November 26, 2007, USCIS stated they are allowing a 30-day transition period making the new



form mandatory beginning December 26, 2007. Failure to utilize the new form from this point forward may result in fines and penalties. This requirement does not include any completed I-9s on file prior to December 26, 2007. You may replace your current I-9 Form with the revised version found at <http://www.uscis.gov/i-9>.

BENEFITS COMPLIANCE FAQ

Question: We want to charge different employee contributions to several different groups of employees. How can we structure our eligibility descriptions to accommodate this without running into discrimination issues?

Answer: According to the ERISA regulations (26 CFR 54.9802-1(d)(1)) and the interim final rules governing the provisions prohibiting discrimination (29 CFR 2590.702) an employer may set different "classes" of employees or groups of "similarly situated individuals" within a company, as long as the groups are based on "bona fide" employment classifications and the groups are not created to influence and/or separate those with health conditions.

26 CFR 54.9802-1(d)(1) states: "...a plan may treat participants as two or more distinct groups of similarly situated individuals

if the distinction between or among the groups of participants is based on a bona fide employment-based classification consistent with the employer's usual business practice ... examples of classifications that ... may be bona fide include full-time versus part-time status, different geographic location, membership in a collective bargaining unit, date of hire, length of service, current employee versus former employee status, and different occupations. However, a classification based on any health factor is not a bona fide employment-based classification, unless the[y are] permitting favorable treatment of individuals with adverse health factors."

Special attention and consideration needs to be given to the formation and description of the "classes", as to not inadvertently violate other nondiscrimination rules. For example, a Section 125 Cafeteria Plan may not discriminate in favor of highly compensated employees, so if one "bona fide" group consisted only of highly compensated employees, compared to the other "bona fide" groups, there could be a risk of not passing the Section 125 Cafeteria Plan's non-discrimination tests. Further, self-insured plans (including health Flexible Spending Accounts) must not discriminate based on age or years of service. Additional legal advice may be needed to formalize class eligibility descriptions.