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DKY, LLC IS NOW THE LARGEST TPA IN THE HILL COUNTRY AND SOUTH TEXAS

After the acquisition of Padgett Stratemann & Co. Retirement Plans Services Group in March 2009, DKY has grown to be the largest retirement plan and benefits TPA in the Hill Country and South Texas. Let us show you what we can do for your business or organization.

Do you have an administration need or questions about your:

Pension or Retirement Plan

COBRA Compliance and Administration

Section 125/Cafeteria Plan

Workers' Compensation/ERISA Plan

FMLA Compliance

ADA Compliance

FLSA Compliance

Job Descriptions

Employee Handbook

Policy & Procedures...?

DKY ACQUIRES PADGETT STRATEMANN & CO. RETIREMENT PLANS SERVICES GROUP

David K. Young Consulting, LLC (DKY), acquired Padgett, Stratemann & Co. Retirement Plan Solutions Group (RPSG) on March 24, 2009. With the acquisition of RPSG, both C. Bryanna McCrea, QKA and Jeff McCrea, formally with RPSG, moved to DKY and will continue to service the former clients of RPSG. We are excited about this acquisition and what it means for DKY. With this acquisition DKY will now be the largest third party administration firm in the Hill Country and South Texas providing retirement plan, health and welfare plan, and COBRA administration and consulting services.

Bryanna McCrea will become the senior retirement plan administrator for the firm bringing over 14 years of qualified retirement plan experience (both DC and DB) to the firm. Bryanna holds a BA degree from the University of New Mexico and is a Qualified 401(k) Administrator (QKA) via ASPPA Benefit Council. Bryanna is also the President of the South Texas ASPPA Benefit Council.

Jeff McCrea brings over 5 years of qualified retirement plan administration and consulting to the firm and is the Treasurer of the South Texas ASPPA Benefit Council. Jeff holds a BA from the University of Missouri – Columbia.

With the addition of Bryanna and Jeff to the DKY staff there are a total of 15 employees working at DKY, including David Young. Combined experience is over 100 years.

DAVID K. YOUNG CONSULTING

TRENDS

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FOR THE CLIENTS & FRIENDS OF DAVID K. YOUNG, MPA, CEBS

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COBRA AND THE ARRA UPDATE

If you have not heard yet, The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a 65% reduction in COBRA premiums for certain assistance eligible individuals for up to 9 months. An assistance eligible individual is a COBRA "qualified beneficiary" who meets all of the following requirements:

- Is eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009;

- Elects COBRA coverage (when first offered or during the additional election period), and

- Has a qualifying event for COBRA coverage that is the employee's involuntary termination during the period beginning September 1, 2008 and ending December 31, 2009.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for periods of coverage that began prior to February 17, 2009.

Employers will not need to report temporary premium assistance to eligible individuals on an information return or Form W-2, according to an IRS spokesperson on April 24. Recent news reports had indicated that the Service would not require information reporting. The IRS intends to update frequently asked questions (FAQs) on its website to reflect this treatment, the spokesperson added.

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RETIREMENT PLAN PARTIAL TERMINATIONS RULES

During this period of economic turmoil, we have been noticing an abundance of loans and hardship distributions. At the same time many employers are experiencing employee turnover rates that far exceed historic levels. Although often overlooked and misunderstood, substantial reductions in an employer's workforce can result in the partial termination of the employer's retirement plan(s). For the reasons described below, this is something to be avoided where possible, given that a partial plan termination is costly and administratively burdensome and may lead to class action litigation and plan disqualification.

The Magic Number is 20%

Section 411(d) of the Internal Revenue Code (the "Code") provides that, when a qualified employee benefit plan terminates or partially terminates, the rights of all "affected employees" to benefits accrued under the plan through the date of the termination or partial termination must become fully vested. Class action litigation over alleged "partial terminations" frequently occurs when unvested terminated participants seek to enforce these retirement plan rights under ERISA.

Although the Code and IRS regulations have not defined a precise standard for determining when a partial termination occurs, the IRS's most recent guidance, in Revenue Ruling 2007-43, has generally followed the

(See "Partial Terms...'" on page 2)

PARTIAL TERMS CONTINUED FROM PAGE 1

analysis of the Seventh Circuit in Matz v. Household Int'l Tax Reduction Inv. Plan. In Household, a series of reorganizations from August 1994 through June 1996 caused more than 20% of the participants to cease participation in Household's defined-contribution plan. Under the plan's design, Household matched employee contributions to individual accounts, and the matching contributions were subject to a vesting schedule. Class action litigation followed.

The Seventh Circuit in Household and the IRS in Revenue Ruling 2007-43 both adopt a presumption that a partial termination occurs where at least 20% of participating employees have an employer-initiated severance from employment over the applicable period. The Seventh Circuit stated that a turnover rate between 10% and 20% was presumptively not a partial termination, and turnover rates below 10% were conclusively not partial plan terminations. A turnover rate above 40% "should be conclusively presumed to be a partial termination," according to Household. The Seventh Circuit also recognized that multiple reductions in force could be aggregated over a period of years if the employment losses resulted from the same corporate event or related corporate events.

Calculating the Turnover Rate

The turnover rate is usually calculated by dividing the number of participants who have had an employer-initiated severance by the sum of (i) all participants at the beginning of the applicable period, and (ii) those participants who have been added to the plan throughout the applicable period. Both vested and non-vested participants are included in the numerator and the denominator, but inactive participants are not included in the denominator. Employers have the burden of proving that termination was voluntary, rather than employer-initiated.

Under Revenue Ruling 2007-43, the IRS does not require that the following participants be included in the numerator:

Participants who become immediately covered by a successor plan in the same controlled group.

Participants whose termination is due to death, disability, normal retirement, cause or voluntary acceptance of an early retirement program.

It should also be noted the position the IRS has taken in Revenue Ruling 2007-43 concerning severances due to economic downturns are to be characterized as employer-initiated. The IRS position requires that plan sponsors NOT feel they can escape a partial termination due to economic downturns such as we are experiencing today.

Under the same Revenue Ruling, the IRS does make clear that voluntary terminations may be excluded from the equation. However, as noted above, the burden of proof regarding the voluntary nature of the separation is on the employer. Again, clear and unambiguous records showing whether terminations are voluntary or employer-initiated are vital in cases where partial terminations might arise. Also, the IRS has clarified that the employer's normal level of employee turnover is another fact that could be used to rebut the 20% presumption. To the extent that it is commonplace for an employer to have annual turnover that exceeds 20%, the employer may be able to demonstrate that this is not the type of situation that the partial termination rules are meant to protect.

401(K) SAFE HARBOR RETIREMENT PLANS 3% SUSPENSION RULES

With the economic downturn some employers face cash flow restraints for employee benefit plans. One is the 401(k) safe harbor contributions. There is possible relief for certain sponsors who will be unable to make 3 percent nonelective contributions for the entire year due to economic conditions.

Based on some public comments that have been made by Treasury officials, there is optimism that relief will be forthcoming. However, based on the regulatory constraints that apply to issues of this nature, it is likely that any relief would be prospective in nature. Therefore, there are two options available to employers who are in this situation:

1) Follow the current regulations, which would require termination of the plan in order to eliminate the 3% nonelective contribution. Under this approach, the employer would not be able to establish another defined contribution plan until at least 12 months after the assets of the plan have been distributed

2) Wait for relief from the Treasury. We recognize the risk of this approach is that the 3% contribution will continue to accrue.

We realize this is an important and extremely time sensitive issue and will stay informed of further developments. If you should have a safe harbor plan, whether DKY administers it or not, you are always welcome to call for answers.

NEW I-9 FORM REQUIRED EFFECTIVE APRIL 3, 2009

The U.S. Citizenship and Immigration Services (USCIS) amended the regulations governing the use of Form I-9 - Employment Eligibility Verification - at the end of last year. The new regulations had an original compliance date of beginning February 2, 2009. However, USCIS delayed the implementation of the new regulations until April 3, 2009. These regulations apply to employees hired on or after the implementation date and for employees who require reverification on or after the implementation date.

Numerous changes and updates were made to the existing I-9 form. Some of the most noteworthy changes include:

Expired documents are no longer acceptable for Form I-9 purposes. Employers may no longer accept expired U.S. passports or List B documents as proof of identity and/or employment authorization.

The Section 1 status boxes now include separate selections for U.S. nationals and U.S. citizens. Prior to this update, Form I-9 grouped U.S. nationals and U.S. citizens into one category. The new form now separates these individuals into separate categories. U.S. nationals are individuals born in American Samoa, certain former citizens of former Trust Territory of the Pacific Islands, and certain children of U.S. nationals born abroad.

Certain List A identity and authorization documentations have been eliminated. Forms I-688 (Temporary Resident Card), I-688A (Employment Authorization Card) and I-688B (Employment Authorization Card) have been eliminated from List A. These Forms are older employment authorization documents and are no longer issued.

Valid passports for certain individuals have been added to the List A evidence of identity and employment authorization. The final regulations add valid passports for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), as well as Form I-94 and Form I-94A nonimmigrant admission under the Compact of Free Association between the U.S. and the FSM or RMI to the List A documents to prove identity and employment authorization. Foreign passports containing certain machine-readable immigrant visas have been added to the List A evidence of identity and employment authorization. A temporary I-551 printed notation on a machine-readable immigrant visa in addition to the foreign passport with a temporary I-551 stamp has been added to the List of Acceptable Documents on List A. The revised I-9 form can be found at: www.uscis.gov/files/form/i-9.pdf.

.... COBRA and the ARRA *FROM PAGE 1*

Subsidy. The ARRA allows eligible individuals to pay 35 percent of the cost of COBRA continuation coverage and be treated as paying the full premium. Employers (and in some cases insurers and other entities) pay the remaining 65 percent of the premium. The subsidy is generally available for nine months.

Payroll tax credit. Employers recover their share of the premium through a credit against payroll taxes. The IRS has instructed employers to use Form 941, Employer's Quarterly Federal Tax Return, which is the only means to claim a credit and be reimbursed for the COBRA subsidy.

Documentation. Although there is no information reporting requirement, entities that claim the credit must maintain records of the payments and supporting documentation. This information should describe, among other things, the covered individual's involuntary termination, eligibility for the COBRA subsidy and the dates and amounts of the individual's 35-percent payments. Insured plans should maintain proof of the premium amount and proof of coverage to eligible individuals.

Appeals. If an individual is denied COBRA premium assistance, he or she can appeal to the U.S. Department of Labor (DOL). The 2009 Recovery Act requires the DOL to make a determination within 15 days.

The DOL will process appeals related to private-sector employer plans subject to ERISA's COBRA provisions. The U.S. Department of Health and Human Services will handle appeals for federal, state and local governmental employees, as well as appeals related to group health insurance coverage provided under state continuation coverage laws.

DKY provides COBRA administration services to several fee based clients, and has been walking our clients through the maze of this new law.. There have been numerous issues raised by specific circumstances that are not always addressed in the federal publications. Through our various sources of information we are able to continue providing administration service and guidance to DKY COBRA clients. Call our office and ask for CynDe Young if you have any COBRA questions.