

## SECTION 409A DEADLINE APPROACHING

**D**ecember 31, 2008 is the deadline for revising nonqualified deferred compensation arrangements to comply with Internal Revenue Code Section 409A.

While the rules have been in effect since 2004, the deadline for conforming all documents that are subject to Section 409A was extended from the end of last year and is not expected to be extended further. Although Section 409A addresses only non-qualified deferred compensation arrangements, the final regulations define the concept of deferred compensation very broadly. Section 409A can apply to a broad array of compensatory arrangements where compensation is earned (or vested) in one year and is paid in a subsequent year.

If an arrangement is not compliant with Section 409A, the individual receiving the deferred compensation is subject to accelerated taxation on the compensation as well as a penalty tax of 20%, plus interest. There may also be state income tax implications. Employers should be reviewing their compensation arrangements to ensure they are compliant with Section 409A. The most common types of arrangements that may be subject to Section 409A include:

- Employment Agreements
- Offer Letters which provide for compensation other than normal salary or benefits
- Severance Agreements and Plans
- Separation Agreements
- Bonus Plans
- Change-in-Control Agreements
- Consulting Agreements
- Long Term Incentive Plans
- Executive Retirement Plans
- Split-Dollar Insurance Benefits
- Equity Based Compensation Arrangements (including option plans and grants)
- Compensation Arrangements that have historically been treated as deferred compensation

*If you need assistance in this area please contact one of the following attorneys in our  
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