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Employee Benefits

2010 Deadline for Amendment to Retirement Plans: HEART

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The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) amended the Internal Revenue Code to provide tax benefits and other benefits for military personnel. Although HEART required that employers implement the program beginning on January 1, 2007, employers were not required to formally amend retirement plan documents until the last day of the 2010 plan year. For calendar year plans, the amendment must be adopted on or before December 31, 2010. The failure to timely amend your plan may result in adverse tax consequences, such as loss of the tax-deferred status of your retirement savings. Your retirement plan only remains qualified for tax benefits if you update your plan documents to reflect changes in the law by the required deadlines.

The HEART requirements generally apply to 401(k), 403(b), and 457(b) plans. Retirement plan sponsors who use prototype plan documents (i.e., documents that are pre-approved by the IRS and sold to plan sponsors through law firms, financial institutions, or plan administrative firms) will generally receive an amendment from your prototype plan sponsor to comply with HEART. If your plan does not follow a prototype plan document, the plan will need to prepare and adopt its own amendment to meet the requirements of HEART. Green & Seifter, Attorneys, PLLC can help you by reviewing a prototype plan sponsor's amendment or preparing an amendment tailored to meet your plan's needs.

The following is a summary of amendments that may need to be made to your plan by the 2010 deadline in order to comply with HEART:

Increased Survivor Benefits

Plans are required to treat participants who die in active military service as if they had returned to active employment with the employer and then terminated as a result of death for the purposes of survivor benefits provided under the plan. This means that survivors of such a participant are entitled to any additional benefits (other than benefit accruals, see below) that they would have been provided if the participant had resumed employment and then terminated employment on account of death, including accelerated vesting and/or ancillary life insurance benefits or other survivor benefits.

Effective Date: Applies to all deaths occurring on or after January 1, 2007.

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Increased Benefit Accruals

Plans may but are not required to credit employees who die or become disabled during military service with the time period of military service for the purposes of determining benefit accruals during that time to a participant. If a plan elects to credit deceased or disabled participants, it must do so on a reasonably equivalent basis among all employees performing military service who die or become disabled as a result of that service.

Effective Date: *Effective January 1, 2007 and applies to deaths and disabilities occurring on or after that date.*

Differential Wage Payments

"Differential pay" is the difference between the amount the individual would have earned if still working for the employer and amount earned from the military. Any payment made by employer to any participant on active duty for more than 30 days is treated as "differential pay".

- Employees receiving differential pay must be treated as active employees and payments are treated as wages for income tax withholding purposes.
- Differential wage payments may, but are not required to, be treated as compensation for purposes of determining contributions and benefits under a plan, but are required to be treated as compensation under the plan for certain other provisions of the tax code (including maximum benefit and contribution levels under Section 415).

Effective Date: *Applies to plan years beginning after December 31, 2008.*

Distributions and Early Withdrawal Penalty Exemption

Plans may treat individuals called up to active duty for more than 30 days as having severed employment during that active duty for purposes of being eligible to receive a distribution. If the participant elects to receive a distribution under this provision, the plan must provide that the individual may not make an elective deferral or employee contribution during the six-month period beginning on the date of distribution. Generally, if the participant who receives such a distribution is younger than 59 ½, the 10% penalty tax for early distributions will apply. However, HEART makes permanent the temporary Pension Protection Act (PPA) provision allowing an individual in the reserves who is called to active duty for at least six months to be exempt from the typical 10% penalty.

Effective Date: *Applies to plan years beginning after December 31, 2008.*

If you have questions about the Heroes Earnings Assistance and Relief Tax Act (HEART), please contact **Julia Joyce Martin** at Green & Seifter, Attorneys, PLLC for assistance. Julia focuses her practice in the areas of economic development, employee benefits, litigation, and tax planning and advocacy. Our Employee Benefits Practice Group is uniquely qualified to address your needs, answer your questions, and handle your employee benefits matters.



Please call Julia at (315) 701-6474 or email jjoyce@gslaw.com