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Retirement Plans - Summaries and Limits

President Bush and certain federal lawmakers have attempted to formulate a bill which would eliminate the various retirement accounts (nine at last count) into one *simplified* plan. While in theory a simplified single retirement plan may be a good concept, given the current state of affairs in Washington, such a “simple” plan may be years from fruition.

As a new year emerges, it is a good idea for employers and employees to review their retirement plans and the contribution limits to plan accordingly.

The following is a brief description of the defined con-

tribution retirement plans with their corresponding contribution lists:

401(K)

These are usually employer sponsored retirement plans for the benefit of the employees, but can be used by self-employed individuals. Such plans are known as Solo(K), Self-Employed(K) or Baby(K). Contributions are excluded from income. Qualified distributions from the plan are taxable as ordinary income.

Annual Contribution Limit:
\$15,500

Annual Catch-Up Contribu-

tion Limit for Persons 50 or Older:
\$5,000

Roth 401(K)

A Roth 401(K) is similar to the regular 401(K) plan except that contributions are not deductible, but rather taxed presently and not upon distribution.

Annual Contribution Limit:
\$15,500

Simple 401(K)

A Simple 401(K) is similar to a regular 401(K), but is easier to administer.

Annual Contribution Limit:
\$10,500

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Consider This

Is your family estate planning current?

The attorneys at CIESLA & CIESLA, P.C. can help with your estate planning and business succession needs.

Contact one of our attorneys today.

Minimum Wage Increase

For Your Business

All employers whether they employ salaried, hourly or both types of employees will be affected by the changes to minimum wage laws.

On December 18, 2006, Governor Rod Blagojevich signed legislation which gradually increases the State’s minimum wage over the next three years. The current minimum wage in Illinois is \$6.50 per hour. Starting July 1, 2007, the State’s minimum wage for most workers will be raised to \$7.50 per hour.

The increase will be followed by subsequent annual increases as follows:

July 1, 2008 - \$7.75 per hour
July 1, 2009 - \$8.00 per hour
July 1, 2010 - \$8.25 per hour

In essence, the State has created a mandatory annual raise for minimum wage employees.

For employers, the annual wages for a minimum wage employee all rise from \$13,520 per year for a minimum wage worker working 40 hours per week to \$17,160 per year. The increase totals 27% from the current annual minimum wage.

This rise in the minimum wage rate will naturally pull all salaries up as employers



will be compelled, through natural economic stabilization pressure, to keep salary percentage increases somewhat consistent throughout an organization.

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Exemptions from Overtime Wage Payment Laws

A common question among employees and owners of companies alike is: when must an employee be paid or be exempt from overtime? Years ago the answer seemed simple: blue-collar workers were entitled to overtime and white-collar workers were exempt.

The laws, like job descriptions, have changed over the years and the basic presumption is that all employees are entitled to overtime unless the employee falls under an exemption. The following categories of positions are ordinarily exempt from overtime wage payment laws:

Executive Employees

A salaried employee whose primary duty is the management of the enterprise, who customarily and regularly oversees the work of two or more other employees and

who has the authority to hire or fire other employees may qualify for an exemption as an executive employee. Examples include a president, chief financial officer, or chief executive officer of a company.

Administrative Employees

A salaried employee whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance may qualify for an exemption as an administrative employee.

Professional Employees

Professional employees are salaried employees whose primary duty is performing

work that requires the knowledge of an advance type in a field of science or learning customarily acquired by a prolonged specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Professional employees are usually categorized as either learned professionals or creative professionals. Examples of learned professionals are accountants, lawyers and doctors. Examples of creative professionals are musicians, authors and actors.

Computer Employees

Computer systems analysts, computer programmers, software engineers or other similar skilled workers may be eligible for an exemption as a computer service professional.

Outside Sales Employees

An outside sales employee may qualify for overtime exemption status when the employee's primary duty is sales and when he/she is customarily and regularly engaged away from the employer's place of business and performing such sales duties.

There are other exemptions as well that are industry specific (i.e., newspaper publisher, switchboard operator, babysitters, farmers, and fishermen). While the foregoing exemptions are provided by federal law, the application of the exemption tests must be made on a case-by-case basis so that an analysis is made of the inherent duties of an employee and not simply a review of the title given to an employee.

Retirement Plans (Continued)

Annual Catch-up Contribution Limit for Persons 50 or Older:
\$2,500

403(B)

A 403(B) retirement plan is a government and exempt organization retirement plan that is similar to a regular 401(K).
Annual Contribution Limit:
\$15,000

Annual Catch-Up Contribution Limit for Persons 50 or Older:
\$5,000

Roth 403(B)

A Roth 403(B) is similar to a regular 403(B) plan except the contributions are not deductible. Instead, the contributions are taxed

immediately and not upon distribution.

Annual Contribution Limit:
\$15,500

Individual Retirement Account (IRA)

An IRA is a personal retirement account that is relatively easy to set up and administer. The contributions are tax deductible and qualified distributions are taxed as ordinary income.

Annual Contribution Limit:
\$4,000

Annual Catch-Up Contribution Limit for Persons 50 or Older:
\$1,000

Roth IRA

Like the traditional IRA, a Roth IRA is an individual

retirement account, but contributions are not deductible. The contributions are taxed in the present and not upon distribution.

Annual Contribution Limit:
\$4,000

Simplified Employee Plan (SEP)

Under a SEP, an employer contributes directly to an IRA of an employee. The contributions are excluded from the employee's gross income. Employees may also contribute to the plan.

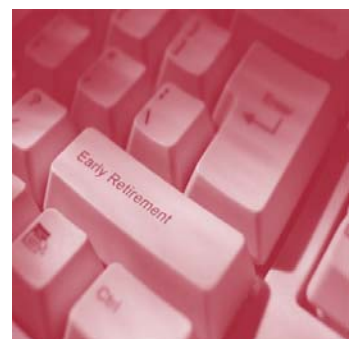
Annual Contribution Limit:
\$45,000

Simple IRA

A simple IRA is established by the employer with an employee or the employee alone is allowed to choose the

financial institution to accept contributions. The contributions are deductible and qualified distributions are taxed as ordinary income.
Annual Contribution Limit:
\$10,500

Annual Catch-Up Contribution Limit for Persons 50 or Older:
\$25,000



Record Retention

All employers maintain employment records, but how long must those records be kept? Believe it or not, employers are not required to maintain personnel records; however various federal laws require employers to maintain certain information about employees. Needless to say, it is advisable that all employers maintain adequate records, not only to avoid fines and penalties under applicable law, but to ensure the ability to prove compliance if an employee alleges a violation.

The general rule of thumb is to maintain general personnel information for at least five years after termination of an employee's employment. This may be extreme, but such a guideline exceeds most federal requirements. The following is a summary of certain select federal laws regarding record retention:

1 Year Retention

Title VII of Civil Rights Act of 1964 (Title VII): A company with 15+ employees must retain personnel records for one year from the date of entry or the personnel action involved, whichever is later (i.e., job application, compensation records, promotions and termination).

A company with 100+ employees must keep its latest EEO-1 report for at least one year. Any records relating to a charge of discrimination must be maintained until the matter is complete.

Age Discrimination in Employment Act (ADEA): A company with 20+ employees must retain employment records such as those in Title VII along with records of tests, physical examinations,

advertisements or notices regarding employment opportunities, written benefit plans, and seniority/merit policies.

2 Year Retention

Fair Labor Standards Act (FLSA): Employees engaged in commerce or the production of goods must retain the following records for two years: wage tables; work time schedules; time cards; work production records; order, shipping and billing records; and increases to or reductions of wages.

3 Year Retention

Age Discrimination Employment Act: A company with 20+ employees is required to maintain payroll records for three years.

Family Medical Leave Act (FMLA): A company with 50+ employees must keep FMLA records for three (3) years: dates of FMLA leave of employees, hours of FMLA leave (if leave is less than a full day); copies of employee notifications for leave; copies of employer notices of employees FMLA rights; copies of employer's policies and procedures regarding FMLA benefits and leaves; and records regarding FMLA disputes.

Immigration Reform and Control Act: All employers must maintain an employee's Form I-9 (verifying employment eligibility) for three years from date of hire or one year from termination date, whichever is later.

5 Year Retention Occupational Safety and Health Act (OSHA):

A company with 11+

employees must maintain records of reports of employee illnesses and injuries on OSHA forms 300, 300A and 301 for five years following the end of the year of the conclusion of the claim.

6 Year Retention

Employee Retirement Income Security Act (ERISA):

Every company maintaining an ERISA negotiated benefit plan must keep records of the plan description, annual reports, summary plan description and amendments for the plan for at least six years after the filing date. Companies must also keep records of a list of participating employees in the plan and terminated employees.

Without a doubt, record retention is a burden on every employer's time and resources. However, record retention is a necessary evil. Record retention allows federal and state agencies to measure compliance with applicable law.

Failure to maintain records will expose a company to fines and penalties as well as compromise the company's ability to prove compliance. Without proper records, a company will likely be pressured not to have complied with applicable employment laws and will expose a company to liabilities for employment law violations and employee claims.

For further information on how to address employee retention records for your company, contact one of our attorneys or visit us at www.cieslaciesla.com.

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The attorneys at CIESLA & CIESLA, P.C. also take part in speaking engagements. If you need a speaker for a meeting or conference regarding the above areas of law call one of our attorneys at 847-412-1988 or email us at mciesla@cclegal.net.

This newsletter and the articles herein should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only. Contact our attorneys for advice on any legal matter.

No Tax Return = No Professional License



“The adverse licensure action taken by the DFPR may be done *without* a hearing.”

Anyone holding a professional license issued by the Illinois Department of Financial and Professional Regulation (DFPR) will want to make sure his/her tax returns are current and tax liabilities have been paid.

Under a proposed regulation, the DFPR may implement license sanctions authorized by Public Act 94-462 for outstanding tax obligations or liabilities. Upon notice from the Illinois Department of Revenue that a person has failed to file a tax return or pay a tax liability owed to the Illinois Department of Revenue, the DFPR may issue an order refusing to issue or renew the professional license of that person. The

DFPR may also choose to issue an order suspending the professional license of that person.

The adverse licensure action taken by the DFPR may be done *without* a hearing. However, if a licensee files a request for a hearing, any adverse action affecting a professional license will be stayed pending the outcome of a hearing. Under the proposed regulation, the DFPR will reverse its licensure action if the licensee provides proof of payment (or, presumably, proof of filing of a delinquent tax return) from the Illinois Department of Revenue.

It is unclear how soon after proof of compliance is given to the DFPR that the DFPR is required to reverse an adverse

licensure action, but it is safe to assume any corrective action will not be swift.

For more information regarding protecting your professional license call one of our attorneys or log onto www.cieslaciesla.com.



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