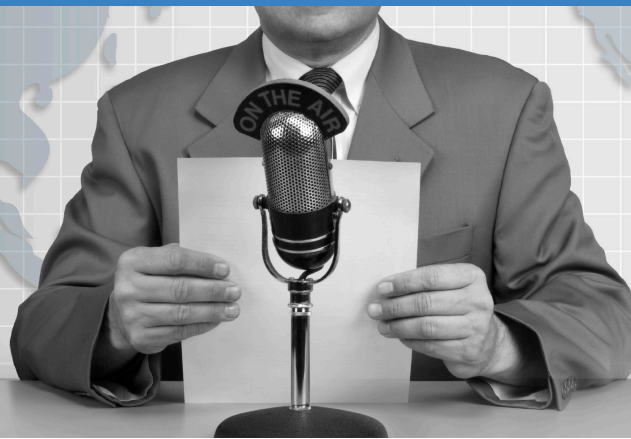


Employee Benefits Broadcast



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Foley is pleased to provide you with a brief summary of the October 20, 2009 installment of the Employee Benefits Broadcast Web conference series.

In **Headline News**, Partner Michael H. Woolever described the Internal Revenue Service's correction program for nonqualified deferred compensation plans that fail to comply with the requirements of Internal Revenue Code Section 409A. The key points are:

- The correction program is described in IRS Notice 2008-113.
- The correction program covers only operational errors such as failure to timely pay a deferred compensation amount. Currently, there is no correction program for document errors such as a document that was not amended to comply with Code Section 409A.
- The program provides varying levels of relief from Code Section 409A penalties depending on (1) when the error occurred and when it is corrected, (2) whether the individual involved is a Section 16 officer, director, or 10-percent owner, and (3) the amount involved.
- To obtain relief under the program, the specific correction rules described in the program must be followed.

Associate Belinda S. Morgan's **Cram Session** segment discussed the current state of the law of same-sex marriages and the effect of such law on employee benefit plans. Highlights of the discussion are:

- The federal Defense of Marriage Act (DOMA) defines marriage as a legal union between a man and a woman. Accordingly, spousal rights under federally governed ERISA plans apply only to opposite-sex spouses.
- On a state level, six states permit same-sex marriages. In these states, spousal rights under non-ERISA plans must generally be extended to cover same-sex spouses.
- Employers should review their ERISA and non-ERISA plan documents and summary plan descriptions to ensure that the term "spouse" is appropriately defined.

In **Mark Your Calendar**, Associate Sarah B. Krause reminded employers of upcoming deadlines for year-end 2009 and early 2010, including the following:

- "Cycle D" qualified retirement plans should file for an updated IRS determination letter, if necessary, by January 31, 2010.
- All qualified retirement plans should be amended to reflect changes that are required or permitted by the Pension Protection Act of 2006 by December 31, 2009.

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- By January 1, 2010, plan administrators should start distributing the updated IRS model tax notice for qualified plan distributions.
- Internal Revenue Code Section 403(b) retirement plans should be amended to comply with new regulations no later than December 31, 2009.
- Generally by January 1, 2010, health plan documents and summary plan descriptions should be revised to reflect the new requirements of the Mental Health Parity and Addiction Equity Act of 2008, Michelle's Law, and the Genetic Information Nondiscrimination Act of 2008.

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About the Employee Benefits Broadcast

The Employee Benefits Broadcast provides participants with needed information in the most efficient manner possible — only a telephone line and Internet access are required to participate — allowing employee benefits professionals to stay up-to-date with timely information from anywhere in the nation.

For more information, please visit Foley.com/EBB or contact Elie Harris at eharris@foley.com.

