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New Rules Affect the Treatment of Compensation Paid After an Employee's Severance from Employment

The IRS issued final regulations that affect the treatment of compensation paid after an employee's severance from employment. The rules require that certain types of post-severance compensation paid within the later of:

- Two and a half months following the employee's severance, or the last day of the limitation year in which the employee severed employment be included as eligible compensation when calculating plan contributions. In addition, the new rules spike out certain forms of compensation that must be excluded and other types that may be optionally included. The regulations are effective for limitation years and plan years beginning on or after July 1, 2007. While you are not required to amend your plan document at this time, you must operationally comply with the new rules

The chart on the following page is a summary of the various forms of post-severance compensation and whether they are required to be included, excluded or are an optional provision. It is also indicated whether the plan document default will be to include or exclude these as eligible compensation and how these affect you from an administrative perspective.

Action and Next Steps

You will need to carefully review the information provided, make a decision as to whether you want to include or exclude the "optional" forms of compensation and administer the plan accordingly. This may require changes in your payroll procedures.

In the second quarter of 2008, we provided a plan amendment referred to as the "Amendment for the Final 415 Regulations" that further explained the new rules. This formally amends your plan for these compensation provisions to keep your plan in compliance with IRS rules.

See chart on the next page...

Form of Post-severance Compensation	Included as Eligible Compensation for Plan Purposes?	Plan Document Impact	Plan Administration Impact
<p>Regular pay: overtime, shift differentials, commissions or bonuses for services performed prior to severance</p>	<p>Required: must be included if paid within the time frame noted above</p>	<p>Provision is included in the definition of compensation</p>	<p>Ensure this form of compensation is included as plan compensation</p>
<p>Leave cash outs: payments for accrued bona fide sick, vacation, or other leave the employee would have been entitled to if employment had continued</p> <p>Deferred compensation: payment from a non-qualified unfunded deferred compensation plan</p>	<p>Optional: may be included if paid within time frame noted above</p> <p>Optional: may be included if paid within time frame noted above and would have been made at the same time had the employee continued employment</p>	<p>Default includes both the leave cash outs and deferred compensation provisions unless you make an election to exclude</p>	<p>Unless you intend to make an election to exclude these forms of compensation, you must include as eligible compensation</p>
<p>Military service payments: (Payments made to an individual who is currently in military service and no longer performs service for the employer)</p>	<p>Optional: may be included but is not subject to the time frame noted above. Can not exceed what the individual would have been paid if the individual had continued to perform services as an employee</p>	<p>Default is to exclude unless you make an election to include</p>	<p>Unless you intend to make an election to include this form of compensation, you must exclude from eligible compensation</p>
<p>Disability compensation: pay to a permanently and totally disabled participant</p>	<p>Optional: may be included but is not subject to the time frame noted above</p>	<p>Default is to exclude unless you make an election to include</p>	<p>Unless you intend to make an election to include this form of compensation, you must exclude from eligible compensation</p>
<p>Severance pay: any pay the individual receives after severance of employment which is a paid as a result of the severance of employment</p>	<p>Excluded: severance pay is not considered post-termination compensation and is not eligible compensation for plan purposes</p>	<p>A plan amendment is not necessary to reflect this provision as severance pay is not included in any IRS definition of compensation</p>	<p>Ensure that severance pay is not included as eligible compensation under the plan</p>