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A NEW METHOD TO INCENTIVIZE YOUNG WORKERS?

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Companies have considered various ways to retain and incentivize their younger, and increasingly mobile, workforce. A recent PLR offers another option: using a 401(k) plan to provide additional benefits (in the form of a nonelective contribution) to employees who pay down their student debt during the plan year.

On August 17, 2018, the IRS released a private letter ruling (PLR 201833012) in which it ruled that a proposed student loan repayment program included in a 401(k) plan does not violate the contingent benefit rule in Internal Revenue Code Section 401(k)(4)(A) and Treas. Reg. 1.401(k)-1(e)(6). The requesting company's 401(k) plan and proposed student loan repayment program included the following features:

- An employee may elect to contribute eligible compensation to the 401(k) plan as pre-tax or Roth elective deferrals, or after-tax employee contributions.
- If an employee makes an elective contribution during a payroll period equal to at least 2% of eligible compensation during the pay period, the company makes a matching contribution equal to 5% of eligible compensation during the pay period.
- An employee may elect to enroll in the student loan repayment program and may opt out on a prospective basis. An employee who participates in the program would continue to be eligible to make elective contributions to the 401(k) plan but would not be eligible to receive regular matching contributions with respect to those elective contributions while participating in the program. The employee would be eligible to receive nonelective contributions and a true-up matching contribution, as described below. An employee who enrolls in the program but later opts out will resume eligibility for regular matching contributions.
- If a participating employee makes a student loan repayment during a pay period of at least 2% of eligible compensation for that pay period, then the company will make a nonelective contribution to the employee's 401(k) plan account equal to 5% of the participant's eligible compensation. The nonelective contribution will be made following the end of the plan year, subject to the employee's continued employment through the end of the plan year.

- If the participating employee does not make a student loan repayment for a pay period of at least 2% of eligible compensation, but does make an elective contribution to the plan of at least 2% during the pay period, the company will make a true-up matching contribution after the end of the plan year equal to 5% of eligible compensation for that pay period, subject to continued employment through the end of the plan year.

The IRS ruled that this student loan repayment program would not violate the contingent benefit rule, which generally prohibits making benefits contingent on an employee's elective contributions to a 401(k) plan (with certain exceptions, including matching contributions). The IRS determined that the company's nonelective contribution was not conditioned (directly or indirectly) on whether an elective contribution was made (or not made) by the employee.

Although this private letter ruling is only binding with respect to the requesting company and cannot be used or cited as precedent, it does indicate that the IRS is open to these types of loan repayment programs in 401(k) plans. Before adopting a similar program, companies should consult legal counsel, as the program should be tailored to the terms of the specific 401(k) plan and comply with other applicable plan qualification rules under the Internal Revenue Code, including nondiscrimination requirements. Finally, companies should be aware that the IRS explicitly based its ruling on the assumption that the requesting company would not extend any student loans to employees that are eligible for the student loan repayment program.

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