

Labor and Employment E-Alert

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Columbus, OH
52 East Gay St.
Post Office Box 1008
Columbus, Ohio 43216
tel 614.464.6400
fax 614.464.6350

Washington, D.C.
1828 L Street N.W.
Eleventh Floor
Washington, DC 20036
tel 202.467.8800
fax 202.467.8900

Cleveland, OH
1375 East Ninth St.
2100 One Cleveland Ctr.
Cleveland, Ohio 44114
tel 216.479.6100
fax 216.479.6060

Cincinnati, OH
221 East Fourth St.
Suite 2000, Atrium Two
Post Office Box 0236
Cincinnati, Ohio 45201
tel 513.723.4000
fax 513.723.4056

Alexandria, VA
277 South Washington St.
Suite 310
Alexandria, VA 22314
tel 703.837.6999
fax 703.549.4492

Akron, OH
106 South Main St.
Suite 1100
Akron, Ohio 44308
tel 330.208.1000
fax 330.208.1001

www.vorys.com

IMMEDIATE ACTION NECESSARY TO COMPLY WITH SECTION 409A OF THE INTERNAL REVENUE CODE

The deadline for compliance with Section 409A of the Internal Revenue Code is quickly approaching. All affected plans and arrangements must comply, or be amended to comply, with the documentation requirements established by the Treasury Department and the Internal Revenue Service on or before **December 31, 2008**.

In general, Section 409A applies to amounts deferred under a "nonqualified deferred compensation plan." Subject to certain exceptions, a nonqualified deferred compensation plan is any arrangement that provides any employee, director or consultant with a legally binding right during a taxable year to compensation that is payable to the participant in a later year. Section 409A may impact the following plans and arrangements:

- Salary deferral plans
- Supplemental executive retirement plans (SERPs)
- Excess benefit plans
- Bonus arrangements
- Severance arrangements, including plans and policies
- Employment agreements
- Equity-based compensation plans, including stock options, SARs, restricted stock units, restricted stock and performance shares/units, and all related award agreements
- Phantom stock or phantom equity arrangements
- Incentive plans, including long-term incentive plans and cash bonus programs
- Change in control agreements or plans
- Any other program that defers receipt of taxable income

If you maintain any of these plans or arrangements, your Vorys attorneys are prepared to provide guidance on the amendments that are necessary for compliance with Section 409A.

If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.

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