



Employment, Labor & Benefits Update

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MasudaFunai

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IRS Announces Qualified Plan Limitations for 2012

By Frank J. Del Barto

On Thursday, October 20, 2011, the Internal Revenue Service (“IRS”) announced the new qualified retirement plan limits for 2012. With the exception of the catch-up contribution limit, which will remain unchanged, many of the 401(k) plan limitations will increase for 2012. The new plan limits are summarized below:

Plan Limit	2011	2012
§401(k) Elective Deferral Maximum	\$16,500	\$17,000
§415 Annual Additions Maximum	\$49,000	\$50,000
§401(a)(17) Annual Compensation Limit	\$245,000	\$250,000
§414(q) Highly Compensated Employee	\$110,000	\$115,000
§414(v) Catch-up Contribution Limit	\$5,500	\$5,500

To ensure that your 401(k) plan remains in compliance, these new plan limits should be reviewed against your plan documents and forwarded to your payroll department or third-party service provider for implementation (as necessary). In addition, plan sponsors should also consider taking this “change” as an opportunity to audit their 401(k) plan operations to ensure that the proper compensation definitions and plan limits have been applied in previous years. If the compensation limits have not been applied correctly, various plan qualification failures may have occurred. Depending on the nature of the plan qualification failure, a plan sponsor may be able to self-correct the failure or file a correction application with the IRS under the Voluntary Correction Program (“VCP”). Should you have any questions about the new plan limits or correcting a 401(k) plan error, please consult your relationship attorney.



Using Employee Credit Reports in California in 2012

By Frank J. Del Barto

On October 9, 2011, California Governor Brown signed Assembly Bill No. 22 (“AB 22”) into law. The new law, which takes effect on January 1, 2012, prohibits California employers and prospective employers, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes, unless the position of the person for whom the report is sought is:

- (1) a managerial position covered under the executive exemption,
- (2) a position in the state Department of Justice,
- (3) a sworn peace officer or other law enforcement position,
- (4) a position for which information in the report is required by law to be obtained,
- (5) a position that involves regular access to the following types of information about individuals for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment: (a) bank or credit card account information, (b) social security number and (c) date of birth,
- (6) a position in which the person is, or would be, any of the following: (a) a named signatory on the bank or credit card account of the employer, (b) authorized to transfer money on behalf of the employer or (3) authorized to enter into financial contracts on behalf of the employer,
- (7) a position that involves access to confidential or proprietary information that (a) derives economic value from not being generally known and (b) is subject to an effort that is reasonable under the circumstances to maintain secrecy of the information,
- (8) a position that involves regular access to cash totaling \$10,000 or more of the employer, a customer or client during the workday.

AB 22 also requires employers to provide written notice informing the person that a credit report will be requested for employment purposes and the specific reason for obtaining the report. As a result of the scope of this new law, all employers with a California presence should review their current use of credit reports for employment purposes in order to determine if continued use would meet the very limited exceptions provide above. If not, the use of credit reports in California should be discontinued. Should you have any questions, please consult your relationship attorney.



Start Using Written Commission Agreements in California in 2013

By Frank J. Del Barto

Recently, California Governor Brown also signed Assembly Bill No. 1396 (“AB 1396”) into law. **Effective January 1, 2013**, whenever a California-based and/or non-California-based employer enters into a contract of employment with an employee for services to be rendered in California and the method of payment involves commissions, the contract must (1) be in writing, (2) set forth how the commissions will be calculated and (3) how the commissions will be paid. The employer is required to provide a signed copy of the contract to the employee and must receive the employee’s signature on the contract in return. In the case of a contract that expires, but the parties still continue to work under the terms of the expired contract, the contract terms are assumed to have remained in full force and effect until the contract is superseded or the employment is terminated by either party.

MFEM on the go . . .

On October 13, 2011, **Alan M. Kaplan** spoke at the Management Association of Illinois’s annual employment law conference. His topic was “Into the Battle: Defending Against the Agency at the Gate,” in which he reviewed the best practices for defending companies when different government agencies investigate. Mr. Kaplan is offering a complimentary lunch with current and prospective clients in a one-on-one setting to discuss this topic and an action plan.

On October 20, 2011, **Frank J. Del Barto** presented “The Most Common Plan Mistakes and How To Correct Them With The IRS and DOL” as part of a 401(k) plan fiduciary foresight seminar. Frank’s program focused on a plan fiduciary’s personal liability, the most common 401(k) problems and voluntarily correcting them via the programs provided by the IRS and DOL.



For more information about this or any other employment law topic, please contact Alan Kaplan, Chair of the Employment, Labor & Benefits Group, at 847.734.8811 or via email at akaplan@masudafunai.com.

About the Employment, Labor & Benefits Group

Masuda Funai's Employment, Labor & Benefits Group provides expertise in all aspects of employment, labor and benefits law. Our attorneys represent management in everything from day-to-day counseling to drafting, negotiations, litigation in federal and state courts, executive and employment agreements, mergers and acquisitions, reorganizations, benefits and compensation plans, OSHA issues, union campaigns, collective bargaining, unlawful picketing and trust fund contribution matters. Our attorneys regularly conduct employment audits, present in-house supervisory training programs and seminars and publish articles and newsletters to help keep our clients up to date about the ever-changing world of employment, labor and benefits law.

About Masuda Funai

Masuda Funai is a full-service law firm representing international and domestic companies operating and investing in the United States. Our 45 attorneys located in Chicago, Schaumburg and Los Angeles counsel clients in every aspect of business, including establishing, acquiring, and financing operations; ownership, development and leasing of real estate; transfer of overseas employees to the U.S.; employment, labor, and benefits counseling and dispute resolution; intellectual property, copyright and trademark; business litigation; creditors' rights and business risk management; structuring the distribution and sale of products and services throughout the U.S.; and estate planning and administration.

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