

## MONTHLY BENEFIT NEWS AND DEVELOPMENTS

July 2008

### Employer-Sponsored IRAs

The Government Accountability Office (GAO) released *IRAs: Government Actions Could Encourage More Employers to Offer IRAs to Employees* (GAO-08-590), which examines the barriers that may discourage small employers from offering individual retirement accounts and the adequacy of the IRS and Labor Department (DOL) oversight of and information on IRAs. The GAO recommends that the DOL have some direct oversight for payroll-deduction IRAs.

Go to: [www.gao.gov](http://www.gao.gov)

### Upcoming Key Dates

**12/15/08** (financial periods beginning after) – Application of GASB Statement 45 for governments with total annual revenues of less than \$10 million.

**12/15/08** – Proposed modification for reporting pension assets under FASB 132.

**12/31/08** – Expiration of 0.2% FUTA (unemployment) surtax.

**12/31/08** – Deadline for compliance with final 409A regulations on nonqualified deferred compensation plans.

**12/31/08** – Expiration of current-law \$100 per day excise tax on group health plans that fail to satisfy the mental health parity requirements.

**12/31/08** (remuneration paid after) – Differential wages paid to employees on active duty are treated as “wages” for federal income tax withholding purposes and (for plan years after) as “compensation” for retirement plan purposes.

### Legislative Activity on the Benefits Front

Congress and the White House reached an agreement on a war supplemental spending bill (H.R.2642), which includes an extension of unemployment benefits. The President signed the measure into law (P.L.110-252) on June 30.

The new law extends 13 weeks of benefits to all workers who have exhausted their regular unemployment benefits and provides up to an additional 13 weeks of benefits in states with seasonally adjusted total unemployment rates of 6% or higher or at least a 4% insured unemployment rate. To be eligible for the benefits, a worker must have worked 20 weeks. Unemployed workers who exhausted their benefits from November 2006 to the present qualify for the extended benefits. The extended benefits program terminates on March 31, 2009.

In addition, the new law includes a provision to require any company or organization that receives at least \$25 million and 80% or more of its revenue from federal payments to disclose the compensation of its most highly compensated officers.

### Bills Signed into Law

*Meanwhile*, the President signed the “Heroes Earnings Assistance and Relief Tax Act” (H.R.6081, P.L.110-245) on June 17 (see [Client Action Bulletin 08-13](#)).

### Other Legislation Moving

In other congressional action:

- The House on June 25 voted 402-17 to approve the “ADA Amendments Act of 2008” (H.R.3195), a bipartisan bill aimed at reversing several U.S. Supreme Court decisions that narrowed the definition of “disability.” The bill, which requires Senate approval, would: clarify the meaning of “substantially limited in a major life activity” in the context of disability; prohibit consideration of medication, prosthetics, and assistive technology in a disability determination; and cover employment discrimination based on a perception that a worker is impaired, regardless of whether the worker has a disability.
- The Senate’s new energy and tax extenders bill (S.3125), like the House-approved H.R.6049, would extend certain employment tax credits, change the tax treatment of deferred compensation paid by managers of certain offshore hedge funds (or other “tax indifferent parties”), and provide favorable tax treatment for bicycle commuting and group legal services. S.3125 also would allow individuals whose livelihoods were negatively affected by the 1989 Exxon Valdez oil spill to contribute any judgment-related income they receive to eligible retirement plans.
- A new bill (H.R.6382) making technical corrections to the Pension Protection Act has been introduced, with key lawmakers hoping for floor action soon after the Independence Day recess.

## Looking at Leave Benefits

The Congressional Research Service released *Leave Benefits in the United States*, which examines the incidence of paid leave that employers voluntarily provide as part of an employee's total compensation. Vacations and holidays are the most commonly offered leave, with more than three-fourths of employees in the private sector receiving paid time off for such reasons. The study analyzes access to leave by employee and employer characteristics.

Go to: [www.opencrs.com](http://www.opencrs.com)

## The Youngest Baby Boomers

The Bureau of Labor Statistics' *Number of Jobs Held, Labor Market Activity, and Earnings Growth Among the Youngest Baby Boomers: Results from a Longitudinal Survey* found that individuals born from 1957 to 1964 held an average of 10.8 jobs from ages 18 to 42, with the majority of the jobs held before age 27. Although job duration tended to be longer the older a worker is when starting a job, these baby boomers continued to have large numbers of short-duration jobs even as they approached middle age. The annual percent growth in inflation-adjusted hourly earnings was fastest when workers were in their late teens and early twenties.

Go to: [www.bls.gov](http://www.bls.gov)

## Elective Deferral Trends

The Social Security Administration issued a report on trends in elective deferrals from 1990 to 2001. The study found that the percentage of workers with deferrals in 401(k) and similar plans has been rising at all earnings levels, and that overall, elective deferrals have been growing as a percentage of total aggregate earnings.

Go to: [www.ssa.gov/policy](http://www.ssa.gov/policy)

## Regulatory Roundup

*Federal government contractors (and certain subcontractors) would be contractually required to use the E-Verify employment eligibility system starting in fiscal year 2009, under a federal acquisition regulation jointly proposed by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration. Employment verification would be required of all newly hired employees and all new and existing employees (hired after Nov. 6, 1986) who are directly engaged in performing work in the U.S.*

### From the Department of the Treasury/IRS:

- *Revenue Ruling 2008-29*, which provides guidance on supplemental wage withholding.
- *Notices 2008-59, 2008-51 and 2008-52*, guidance on health savings accounts (HSAs).
- *Announcement 2008-63*, increasing the optional standard mileage rate for business use of a car to 58.5 cents per mile, effective July 1, 2008.
- *Announcement 2008-56*, changing the reporting of dividends on employer securities distributed from an employee stock ownership plan (ESOP).
- A *proposed rule* on applying the accrual rule for defined benefit plans that determine benefits using the greater of two or more separate formulas.
- Two *Private Letter Rulings* approving substitute mortality tables for pension plans making minimum funding standards computations.

### From the Social Security Administration:

- A *proposed rule* changing the age of persons "closely approaching retirement age" from 60-64 to age 60 or older.

### From the Pension Benefit Guaranty Corporation:

- A *proposed rule* to treat a bankruptcy filing date as the plan termination date for determination of the Priority Category 3 benefit.

### U.S. Supreme Court Rules on "Dual Role" ERISA Plan Administrator

The U.S. Supreme Court ruled 6-3 that an ERISA plan administrator who performs a dual role – both deciding the validity of a benefits claim and paying the claim – operates under a conflict of interest (*MetLife v. Glenn* (No. 06-923, June 19, 2008)). The Court, however, did not construct a formula or set of rules for determining the weight to give this fact, instead saying each case must be considered on its own merits, with courts deciding whether a denied benefits claim had been accurately assessed.

*In other rulings*, the Court decided: Kentucky's retirement plan provisions that boosted disability pension benefits to workers who became disabled before reaching the plan's normal retirement age did not violate the Age Discrimination in Employment Act (ADEA); an employer under the ADEA bears the burden of proving that dismissal decisions adversely affecting a disproportionate number of older employees were based on "reasonable factors other than age"; and that National Labor Relations Act preempted a California law that prohibited some companies from speaking out against union organizing drives and similar union activities.

(See [Client Action Bulletin 08-14](#).)