

## **METRO NEWS – Report #65**

### **March 23, 2007**

#### **To our clients and friends:**

This is another in a series of newsletters designed to keep you clearly informed of current events in the area of employee benefit plans (plus other actuarial stuff).

**Update on the new Pension Law (“PPA ‘06”)** – While most people are enjoying various aspects of the new law (401k auto-enrollment, higher limits now permanent, cash balance plans legal, other fun stuff – see Metro #64), we are dealing with how to best handle two tricky “compliance” issues:

- a) Revised payout notices – From time to time, Congress becomes concerned about “leakage” from the retirement system, i.e., people want to spend their (own) money before they retire. One provision of PPA requires a plan to advise any potential payee of how much happier they’ll be if they do not take their money out of the plan now. They call this “consequences of deferring distribution”. Accordingly, our revised payout paperwork will soon include this type of advice. In general, you will (of course) usually get more money if you take it out later. Do you need Congress to tell you this?

Potential exceptions to this “later is more” philosophy include two types of payouts that could decrease if you wait. One is a lump-sum payout from a defined benefit pension plan (if interest rates go up, your lump sum might go down). The other is the death benefit available under a pension plan. If you do not take a payout today, and you die before retirement, your beneficiary may get less value down the road than you could get now. If unmarried, you may have no death benefit. Again, note that both of these exceptions typically involve defined benefit pension plans – not 401(k) plans.

- b) Quarterly benefit statements – The 401(k) industry is actively trying to cope with this new PPA provision. By 5/15/07, all 401(k) plans in which employees can “direct” their own investments must provide quarterly benefit statements, no later than 45 days after the end of each quarter. While many 401(k) plans are already somewhat in compliance with this rule, Congress (again) muddled up this idea by requiring more disclosures on these statements:

- the latest vesting percentage, and
- a statement if the plan is “integrated with Social Security”. (i.e., the Employer gives a higher rate of contribution on higher salaries – This is allowed, within limits, if provided for in the Plan document.)

An even bigger challenge involves required reporting for plans where the Employer controls the investments. (Typically, Profit Sharing plans without a 401k provision.) Under PPA, these plans must provide an annual (not quarterly) statement. However, preliminary DOL guidance would require these statements to be issued within 45 days after the end of the plan year. For various reasons, this is logistically un-doable. For example, many of these profit sharing plans will not even determine the amount of their 2006 contribution until the summer or fall of 2007; so you can imagine how unworkable a 3/15/07 reporting due date might be. In the absence of any new information to report, plans may be forced to re-report old information (i.e., the 2005 contribution and 12/31/05 balance) on the 3/15/07 date, which seems to defeat the purpose.

At least Congress means well! Contact your Analyst or Managing Consultant if you’d like to discuss any PPA issues or concerns.

### **Exempt or Non Exempt?**

One of the most confusing questions faced by employers is also one of the most fundamental: how to pay their employees. Can a particular employee be classified as an exempt employee and be paid on a salary basis, or must that employee be classified as a non-exempt employee and be paid on an hourly basis including overtime?

In 2004 the Department of Labor issued new rules intended to clarify the criteria used to determine who is an exempt and who is a non-exempt employee according to the Fair Labor Standards Act (“FLSA”). Unfortunately, these “clarifications” caused even more confusion about an already-confusing topic. Briefly summarized, under the FLSA an exempt employee is one who meets the following criteria:

- Salary – The employee must be paid on a salary basis and must be paid the minimum salary of \$455 per week (\$23,660 annually). In general, an employee who makes less than \$455 per week cannot be classified as exempt.
- Job Duties – The content of the job, *not* the job title, is used to determine whether or not a job can be classified as exempt. An employee may have the title of “manager” or “supervisor”, but that does not mean the employee is automatically an exempt employee. An “exempt” employee generally performs duties such as (a) managing a company or a department within a company, (b) supervising the work of at least two other employees, (c) having the authority to make decisions or recommendations regarding the hiring, firing, or promotion of other employees, or (d) making decisions requiring independent judgment and discretion about significant business matters.

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Failure to properly classify and pay employees can have serious and expensive consequences. Employers who have improperly classified a non-exempt employee as an exempt employee can be held liable for lost overtime pay for up to three years. In addition, in cases of multiple, willful or repeated violations, the employer can be assessed significant fines and penalties by the DOL. To avoid liability, employers should review their job classifications to ensure that all positions are classified properly and that employees are being properly paid.

If you have questions or need assistance with a review of your job classifications, please contact Metro Benefits, Inc.

### **Old Business – Updates:**

**From Metro News #63** – We advised you last year that the metal value in pennies and nickels was getting ready to exceed the value of those coins. Well, that has now occurred! As a result, Congress now forbids the melting or bulk export of pennies and nickels.

**From Metro News #64** – We wondered why parking lots offer an “earlybird” parking rate. Loyal reader Brian Robinette (from The Fragasso Group) has come to our rescue. Paraphrasing from Brian’s response:

- Brian at one time ran the largest indoor parking facility in Pittsburgh
- The early bird rates a “marketing ploy” to utilize all of the spaces regularly
- Most of the profit is made on folks (like me!) who come into the city for an hour or two, as these spaces turn over.
- This extra profit allows the lot to offer a more reasonable all-day rate
- “It also helps the lot manage its space more efficiently”

It appears that we have found an authoritative resource! Thanks for sharing your experience with us, Brian!! (By the way, Brian will be serving as the new Retirement Plan Coordinator for The Fragasso Group!)

### **Metro Updates:**

- Welcome to Linda Fulton - Linda will work as an Administrative Assistant. Linda has over 18 years of experience working with the North Hills School of Health Occupations and Career Training Academy.
- Welcome to Jennifer Stenson - Jennifer has been in the 401(k) field for over 10 years, and comes to us from Federated Investments. Jennifer will serve as an Analyst for several assigned plans.
- (We seem to be growing)!!

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- Two employees have received well-earned promotions:
  - Bryon DiGiorgio has been promoted to Pension Analyst
  - Kelly Pucciarelli has been promoted to Senior Analyst
- David Lipkin (me) celebrated his 30<sup>th</sup> anniversary in the pension field on 3/14/07. Starting at the Aetna in 1977, David founded Metro in 1986.
- Responding to an informal survey, we have determined that every Metro employee balances their own checking account. (Do you?) This could be relevant because these are the people who are reconciling your 401(k) plan assets. Send me an e-mail to tell me about your own "update." (if you do not balance your checking account, let me know why.)

**Plan Document Update (Again!):**

Our 2/07 mailing went very well, as almost every client responded properly and on time. You all get an "A". It is likely that another "model amendment" will be required by 3/15/08. For what its worth, legislation is being introduced that would protect small plans from this IRS overzealous lunacy, but don't expect relief anytime soon.

**In Memorium:**

One of Metro's biggest supporters passed away recently. My Dad, Bertram Lipkin, passed away at age 80 on 2/15/07.

My Dad was a "people person", who devoted his professional career to teaching (Latin & Spanish & French). He was interested in the stock market and National League (N.Y.) baseball. The name "Metro Benefits" (as in Go Mets!) was not entirely accidental, as his love of baseball was passed down to me.

He gave me unyielding support. I love you, Dad. Thank you for everything!!

Best Wishes and good luck, David M. Lipkin, F.S.A., Editor

**Metro Benefits, Inc.** is a regional consulting and administration firm, based in Pittsburgh, PA. We provide a wide range of services for employee benefit plans. While we make every effort to verify the accuracy of the information that we present here, you should consult with your Plan attorney or other advisor before acting upon it.