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# Tech Flex

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NATIONAL ACCOUNT SERVICES

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## IRS MODIFIES EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM

The Internal Revenue Service (IRS) issued two revenue procedures that modified certain correction procedures under the IRS' Employee Plans Compliance Resolution System (EPCRS). The EPCRS sets out ways for plan sponsors to correct their retirement plan's compliance with Internal Revenue Code requirements. In Revenue Procedure 2015-27, the IRS clarified and expanded the correction methods for overpayments made by retirement plans to plan participants. In addition, the IRS reduced fees for streamlined correction filings relating to missed required minimum distributions and plan loan failures. In the other guidance, Revenue Procedure 2015-28, the IRS provided revised safe harbor correction methods for failures to begin or to escalate the amount of participant contributions under a plan's automatic contribution feature and for other elective deferral failures. The new revenue procedures modify and clarify, but do not replace, Revenue Procedure 2013-12, the current version of the IRS EPCRS program. These measures are helpful for plan sponsors, because they clarify certain requirements, allow more time to discover and make corrections, and reduce compliance costs.

**Background**

The IRS allows plan sponsors of retirement plans – including 401(k), 403(b) and SIMPLE IRA plans – to correct plan errors under safe harbor methods set out in the EPCRS. If properly corrected, the plan sponsor may avoid the risk of having the IRS issue penalties and/or disqualify their plans because of these errors. The EPCRS provides a set of correction principles and specific methods for correcting a variety of plan qualification problems.

**<u>Revenue Procedure 2015-27</u>** is generally effective July 1, 2015. However, plan sponsors are permitted, at their option, to apply the provisions of this revenue procedure on or after March 27, 2015. Some highlights are as follows:

- **Clarifications on Rules for Overpayment Failures***.* In response to its concern that plan sponsors were interpreting Revenue Procedure 2013-12 to *require* plan sponsors to collect any overpaid amounts from plan participants and beneficiaries, in Revenue Procedure 2015-27 the IRS clarified that, depending on the nature of the failure, the plan sponsor or another party could make a plan contribution with interest in lieu of seeking repayment from participants or beneficiaries. Alternatively, a plan sponsor may retroactively amend the plan document to conform to the plan's operation, so long as the amendment otherwise complies with the EPCRS rules for retroactive amendment.

- **Reduced IRS Filing Fees.** Under the new guidance, the IRS lowered the filing fee under its Voluntary Compliance Program (VCP) for submissions relating solely to plan loan failures or missed required minimum distributions.

  <u>Plan Loans:</u> If a VCP submission involves only a plan loan failure that does not affect more than 25% of the plan sponsor's participants in any year in which the failure occurred, the filing fee would be:

| Number of Participants With Loan Failures | Compliance Fee |
|---|---|
| 13 or fewer | $300 |
| 14 to 50 | $600 |
| 51 to 100 | $1,000 |
| 101 to 150 | $2,000 |
| Over 150 | $3,000 |

Previously, the fee was 50% of the regular filing fee that is based on the number of plan participants – regardless of the number of participants whose loans needed to be corrected. This resulted in potentially large filing fees ranging from $375 to $12,500.

Required Minimum Distributions: Under Revenue Procedure 2015-27, a reduced VCP filing fee of $500 is available for minimum distribution failures involving up to 150 participants and $1,500 for failures involving 151 to 300 participants. Previously, a reduced filing fee was available only for minimum distribution failures involving 50 or fewer participants.

- **Section 415 Failures.** Code Section 415(c) limits the contributions and forfeitures that can be allocated to a participant's account in a defined contribution plan. For 2015, the Section 415(c) limit is the lesser of $53,000 or 100% of the participant's compensation. For example: in 2015, a participant (age 45) makes unmatched, pretax deferrals of $18,000; the plan sponsor also makes a non-elective contribution of $40,000 to the participant's account for the 2015 plan year. Under the current EPCRS, the plan sponsor may correct the excess annual additions by returning $5,000 of the participant's deferrals to the participant within two-and-a-half months after the end of the year (and permitted this type of correction to be made each year that the problem arises). Revenue Procedure 2015-27 changed the deadline to nine-and-a-half months after year end, and retained the ability to do this correction process each year, if needed.

For a copy of Revenue Procedure 2015-27 please click on the link provided below.

http://www.irs.gov/pub/irs-drop/rp-15-27.pdf

**Revenue Procedure 2015-28** is effective April 2, 2015. Some of the highlights are as follows:

**Missed Deferrals Corrections.** Revenue Procedure 2015-27 modifies the corrective contributions required to correct missed deferrals for automatic enrollment plans, automatic increases in deferrals, or elected deferrals.

- Automatic Contribution Arrangements: Revenue Procedure 2015-28 reduces the cost of correction for plans with automatic contribution arrangements. Under prior guidance, to correct automatic contribution or escalation failures ("automatic enrollment errors"), the plan sponsor had to make a corrective contribution to the plan of 50% of the employee's missed deferral opportunity plus any required matching contributions and investment earnings. Under the new guidance, if the employee's salary deferrals begin within nine-and-a-half months after the end of the plan year in which the failure occurred (or, if notified by the affected employee, the first payroll after the end of the month following the month the employee notified the plan sponsor), the only contribution the plan sponsor will have to make is the amount of the matching contribution that would have been made if the automatic deferrals had commenced in a timely way, plus investment earnings. This missed matching contribution must be made by the last day of the second plan year after the plan year in which the automatic enrollment error occurred. Plan sponsors are also required to notify affected employees no later than 45 days after the date on which corrections begin. This notice must include an explanation of the error and how it was corrected, a statement that a contribution has been made to compensate for missed matching contributions, a statement that the participant is able to increase his or her election to make up for missed deferrals, and contact information in the event the participant has questions. Further, if the employee had not made an investment election, earnings attributable to the missed contributions may be calculated based on the plan's default investment alternative. This correction method is only available for failures occurring prior to December 31, 2020 (this sunset may be extended in future IRS guidance).

- Failure to Implement Elective Deferrals: Revenue Procedure 2015-28 provides two additional safe harbor correction methods that may be used regardless of whether or not the plan has automatic enrollment. If a participant makes a salary deferral election, but the plan fails to begin deducting the elective deferrals from the participant's pay, the plan sponsor may correct the failure by implementing the participant's deferral elections. If the failure is corrected (i.e., deferrals start) within three months of the failure, no plan sponsor contribution is required. If the failure is corrected after three months – but before the end of the second plan year following the year of the failure – the plan sponsor must make a corrective contribution of 25% of the missed deferrals. Previously, the required corrective contribution amount was 50% of the missed deferrals. In either case, the plan sponsor must contribute the full amount of any missed matching contributions. Those contributions, along with the corrective contribution equal to 25% of the missed deferrals, must be adjusted for lost earnings (calculated at the plan's default investment option rate if the employee made no investment election). Affected employees must receive the 45-day notice as described above.

For a copy of Revenue Procedure 2015-28 please click on the link provided below.

http://www.irs.gov/pub/irs-drop/rp-15-28.pdf

## MICHIGAN WAGE GARNISHMENT REFORM ENACTED

On April 14, 2015, Michigan Governor Rick Snyder signed into law House Bill 4119 (HB 4119) and House Bill 4120 (HB 4120) which revise numerous rules in relation to wage garnishments in the state. HB 4119 is effective for garnishments issued after September 30, 2015. HB 4120 is effective 90 days from the date of Governor Snyder's signature, specifically July 13, 2015.
HB 4119 amends Section 4012 of the Revised Judicature Act, which governs garnishments of periodic payments. Some of the highlights are as follows:

- Provides that a garnishment will remain in effect until the balance of the judgment is satisfied. Currently a writ of garnishment of wages, salary, commissions, or other earnings remains in effect for 182 days.
- Replaces with recurring $6 fee payable at the time of original issuance and renewal with a one-time $35 fee to the garnishee at the time a garnishment is served on the garnishee.
- Requires a plaintiff to give the garnishee and defendant a statement of the remaining balance of the judgment at least once every six months while a garnishment is in effect.
- Requires a plaintiff to give the garnishee and defendant a release of garnishment within 21 days after the balance of the judgment has been paid.
- Prohibit a plaintiff from requesting a default to be entered against a garnishee unless the garnishee failed to file a disclosure within 14 days after service of a garnishment or otherwise perform a required act, and did not cure the failure within 28 days after the plaintiff mailed notice of request to cure stating the garnishee will immediately begin withholding any available funds subject to garnishment.
- Allow a plaintiff to file with the court a request for default judgment after a default had been entered.
- Requires the court, on the garnishee's motion, to reduce and/or set aside a default judgment under the following circumstances:
  - If the garnishee certifies by affidavit that its failure to comply with the garnishment was inadvertent or caused by an administrative error, mistake, or other oversight and it will immediately begin withholding any available funds or immediately begin performing any other required act pursuant to the garnishment as provided by statute or court rule, reduce the default judgment to not more than the amount that would have been withheld if the garnishment had been in effect for 56 days.
  - If any of the following circumstances exist, set aside the default judgment: (1) The garnishee was not liable to the defendant for any periodic payments after service of the garnishment. (2) The garnishment, notice of failure, request for entry of a default, or request for default judgment was not properly served or sent. (3) The notice of failure was materially inaccurate or incomplete.
- Provides that a garnishment or a notice of failure is not valid or enforceable unless it is served on the garnishee in accordance with the Michigan Court Rules. For example, orders sent to local or branch offices rather than to the employer's corporate headquarters are unenforceable.
- Specifies that garnishments have priority in the order in which they are received, except that an order of income withholding under the Support and Parenting Time Enforcement Act and a levy to satisfy a tax liability has priority over a garnishment.

For a copy of HB 4119 please click on the link provided below:

http://www.legislature.mi.gov/documents/2015-2016/billenrolled/House/pdf/2015-HNB-4119.pdf

House Bill 4120 amends Public Act 390 of 1978, which regulates the payment of wages and fringe benefits and is summarized as follows:

- Allows an employer to deduct amounts from the wages of an employee without the employee's written consent if the employer paid any part of an employee's debt under a default judgment, and all of the following conditions are met:
    - The employer gives the employee a written explanation of the deduction at least one pay period before the wage payment affected by the deduction is made. The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is to be made.
    - The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.
    - The deduction does not reduce the employee's gross wages to a rate that is less than the state or federal minimum wage rate, whichever is greater.

For a copy of HB 4120 please click on the link provided below:

http://www.legislature.mi.gov/documents/2015-2016/billenrolled/House/pdf/2015-HNB-4120.pdf

## NEVADA MINIMUM WAGE TO REMAIN UNCHANGED

The Nevada Office of the Labor Commissioner has announced that the minimum wage requirements will remain the same as of July 1, 2015. Specifically the minimum wage for employees who receive qualified health benefits from their employer will remain at $7.25 per hour and the minimum wage for employees who do not receive health benefits will remain at $8.25 per hour.

By way of background, the 2006 Minimum Wage Amendment to the Nevada Constitution requires the minimum wage to be recalculated and adjusted each year based on increases in the federal minimum wage, or, if greater, by the cumulative increase in the cost of living.

In addition, daily overtime rate requirements will also remain the same on July 1. Employees who receive qualified health benefits from their employer and earn less than $10.875 per hour, and employees earning less than $12.375 per hour who do not receive qualified health benefits must be paid overtime whenever they work for more than eight hours in a 24-hour period. Nevada is one of a few states with a daily overtime requirement in addition to the requirement that employees be paid overtime for working more than 40 hours in a workweek. Overtime requirements do not apply to exempt employees.

For a copy of the Nevada announcement please copy and paste the following links into your browser:

Nevada Annual Minimum Wage Bulletin:

http://www.laborcommissioner.com/min_wage_overtime/2015%20Annual%20Bulletin%20-%20Minimum%20Wage.pdf

Nevada Annual Daily Overtime Bulletin:

http://www.laborcommissioner.com/min_wage_overtime/2015%20Annual%20Bulletin%20-%20Daily%20Overtime.pdf

State of Nevada Department of Business and Industry, Press Release, March 31, 2015,

http://www.laborcommissioner.com/min_wage_overtime/2015%20Minimum%20Wage%20Rates%20Press%20Release.pdf

## SOUTH DAKOTA ENACTS YOUTH MINIMUM WAGE

On March 20, 2015, South Dakota Governor Dennis Daugaard signed into law Senate Bill 177 which allows employers to pay employees under the age of 18 a reduced minimum wage of $7.50 per hour and provides that this rate is not subject to the annual minimum wage adjustment under statute Section 60-11-3.2.

Section 60-11-3.2, which was put into place by voters through Initiated Measure 18 in the November 4, 2014, General Election, requires the state minimum wage rate to be adjusted annually, starting in 2016, by the increase, if any, in the cost of living, rounded to the nearest five cents. The voter initiative also set the state minimum wage rate at $8.50 per hour for 2015.

The new law, which takes effect on July 1, also prohibits employers from displacing any employee, including a partial displacement through a reduction of hours, wages or employment benefits, in order to hire an employee at the reduced youth rate.

For a copy of Senate Bill 177 please click on the link provided below:

http://legis.sd.gov/docs/legsession/2015/Bills/SB177ENR.pdf

## UTAH MODIFIES INVOLUNTARILY TERMINATED EMPLOYEE PAY RULES

Under the current Utah statute (Utah Code Ann. § 34-28-5), “whenever an employer separates an employee from the employer's payroll the unpaid wages of the employee become due immediately, and the employer shall pay the wages to the employee within 24 hours of the time of separation at the specified place of payment.” Upon the failure to pay wages due to an involuntarily terminated employee within 24 hours of written demand, the wages (at the same rate that the employee received at the time of separation) must continue from the date of demand until paid, for a period of up to 60 days.

As a result of the enactment of Senate Bill 272 (S.B. 272), **effective May 12, 2015**, the 24 hour time to period to pay will be considered met if one of the following three options are exercised by the employer.

1. The employer mails the wages to the employee; and the envelope that contains the wages is postmarked with a date that is no more than one day after the day on which the employer separates the employee from the employer's payroll.

2. Within 24 hours after the employer separates the employee from the employer's payroll, the employer, initiates a direct deposit of the wages into the employee's account.

3. The employer hand delivers the wages to the employee within 24 hours of termination.

It is important note that an employee who voluntarily resigns must be paid by the next regular payday of such employee.

For a copy of S.B. 272 please click on the link provided below:

http://le.utah.gov/~2015/bills/static/SB0272.html#34-28-5

## WEST VIRGINIA CHANGES PAY FREQUENCY REQUIREMENTS

West Virginia law, specifically West Virginia Code § 21-5-3 requires that employers must pay employees at least biweekly.

As a result of the enactment of Senate Bill 318 (S.B. 318), **effective June 12, 2015**, West Virginia employers must pay employees at least twice every month (e.g. semi-monthly) and with no more than 19 days between wage payments. S.B. 318 modifies West Virginia Code § 21-5-3 as follows:

“(a) Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least twice every month and with no more than nineteen days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.”

For a copy of S.B. 318 please copy and paste the following into your browser:

http://www.legis.state.wv.us/Bill_Text_HTML/2015_SESSIONS/RS/pdf_bills/sb318%20enr%20printed.pdf

## CHANGE TO DEFINITION OF "SPOUSE" UNDER FMLA BLOCKED IN FOUR STATES

On Thursday March 26, 2015, state attorneys from Arkansas, Louisiana, Nebraska and Texas general won their bid to temporarily block the United States Department of Labor (DOL) from enacting a new rule under the Family Medical Leave Act (FMLA) that would extend protections to same-sex couples when a Texas federal judge granted a preliminary injunction. Outside of those four states, the new FMLA rule takes effect on March 27, 2015.

The order, issued by a federal district court in Texas, means employers in four states can opt to recognize only opposite-sex spouses for FMLA purposes, pending a full hearing and decision in the case. The states' complaint charges that the new FMLA rule violates Section 2 of the Defense of Marriage Act (DOMA), involves matters traditionally regulated by state law, and oversteps the states' sovereign authority.

For a copy of the temporary injunction please click on the link provided below

http://www.washingtonblade.com/content/files/2015/03/260063664-7-15-cv-00056-18.pdf

**DOL Response:**

In response to the court ruling addressed above, the DOL has stipulated in a “Defendant’s Request for Hearing” that it will not be enforcing in Texas, Arkansas, Louisiana, and Nebraska its final rule revising the definition of “spouse” under the FMLA to include employees in same-sex marriages stating the following:

> [W]hile the preliminary injunction remains in effect, the [DOL does] not intend to take any action to enforce the provisions of the Family and Medical Leave Act (FMLA) . . . against the states of Texas, Arkansas, Louisiana, or Nebraska, or officers, agencies, or employees of those states acting in their official capacity, in a manner that employs the definition of the term “spouse” contained in the February 25, 2015, final rule.

However, the DOL announced in the same document (see quote below) that it is the understanding of the DOL that the injunction only pertains to the four states and that it is permitted to enforce its final rule in the remaining 46 states and the District of Columbia.

> The defendants further understand that the Court’s order was not intended to preclude enforcement of the provisions of the FMLA under the new rule against persons other than the named plaintiffs in this action, and thus applies only to the state governments of the states of Texas, Arkansas, Louisiana, and Nebraska.

For a copy of the “Defendant’s Request for Hearing” please click on the link below.

http://www.dol.gov/whd/fmla/20150331RequestForHearing.pdf

On April 10, the court which handed down the temporary block regarding the change to the FMLA definition of spouse heard the DOL’s motion via the “Defendant’s Request for Hearing” to reconsider the court’s earlier ruling prohibiting enforcement, and it refused to overturn the ruling.

**Background:**

On February 25, 2015, the Department of Labor issued regulations revising the definition of spouse under the Family and Medical Leave Act of 1993 (FMLA). Under the revised regulations, the definition of spouse will now be based on the state of celebration (where the employee and spouse were married) as opposed to the state of residence (where the employee and spouse live).

After the United States Department of Labor (DOL) issued a Notice of Proposed Rulemaking (NPRM) on June 20, 2014, and final regulations on February 25, 2015, effective March 27, 2015, the definition of "spouse" is as follows:

> Spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:
>
> (1) Was entered into in a State that recognizes such marriages; or
>
> (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.
>
> Under the current regulation, employees in same-sex marriages have the right to take FMLA leave based on their same-sex marriage only if they reside in a State that recognizes same-sex marriage. In contrast, under the Final Rule's place of celebration rule, all eligible employees in same-sex marriages will be able to take FMLA leave based on their marital relationship, regardless of their state of residence.

For a copy of the Final Rule, please click on the link provided below:

http://www.gpo.gov/fdsys/pkg/FR-2015-02-25/pdf/2015-03569.pdf