

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

IRS Issues 403(b) Plan Guidance--

On December 17, 2007, the IRS published [Revenue Procedure 2007-71](#). This publication provides guidance to public school districts regarding the structure and application of 403(b) plans.

It provides model plan language that may be used by public schools either to adopt a written plan to reflect the requirements of IRS Code Section 403(b) and its regulations or to amend its existing Section 403(b) plan to reflect the requirements of Section 403(b).

While school districts may adopt the model language, they are not required to do so. To the extent, however, that a school district adopts and uses the model language, it will satisfy the written plan requirements. Districts should note, however, that the model language does

not necessarily satisfy the regulatory requirements for *all* school districts or may include language not necessary for a particular district.

For example, the model language only includes language for elective employee salary reduction contributions. It does not include language sufficient to allow employer non-elective contributions either during service or post-retirement.

Because a school district must operate its plan in compliance with its written document, the model language will not be sufficient for written or operational compliance if employer contributions are made.

Further, the model language includes many optional provisions, such as automatic participation, hardship withdrawals, loans and small

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BIMP Legislation Requires Public Disclosure of Significant Contracts--

The much-awaited [FY2008 Budget Implementation Act](#) ("Act"), took effect on January 11, 2008, and imposes new obligations on school districts with respect to public disclosure of "significant" contracts.

Under the Act, which adds new Section 10-20.40 to the Illinois [School Code \(105 ILCS 5/10-20.40\)](#), all school boards (including Chicago) must now immediately undertake the following:

- list on their existing district Internet websites all contracts over \$25,000 and any contracts entered into with an exclusive bargaining representative; and
- annually report on all contracts over \$25,000 awarded by the district in the previous fiscal year. This report is to be submitted to ISBE prior to December 1 in conjunction with the district's annual Statement of Affairs, made available to the public, and also published on the district's website. The report must include at least the following:

- The total number and total value of all contracts awarded by the district, and

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Reminders/Notes

- Remember your statutory and CBA deadlines for reductions-in-force or dismissal of certificated or educational support employees. Contact *Ellen Rothenberg* or *Lori Martin* with your evaluation, dismissal or RIF inquiries.
- Review the necessity for administrative reclassifications or non-renewal of employment contracts and take any necessary action prior to April 1, 2008.
- The Consumer Price Index can now be found on our website, www.hlerk.com. A link is provided on the right side of our home page.
- Visit www.hlerk.com or www.meds-pdn.com for a complete listing of our upcoming HLERK/MEDS-PDN programs.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Offices:

Arlington Hts. 847-670-9000
Springfield 217-546-9200
Belleville 618-355-7850

Contracts Cont.

-The total number and total value of all contracts awarded to minority-owned businesses, female-owned businesses, businesses owned by individuals with disabilities, and locally-owned businesses.

For more information on this new reporting requirement, please contact Terry Hodges, Heather Brickman or Jeff Goelitz.

EEOC Adopts Rule Permitting Employers to Reduce/Eliminate Any Health Insurance Benefits Provided to Retirees Who Are Medicare Eligible--The Equal Employment Opportunity Commission ("EEOC") recently issued a rule under the *Age Discrimination and Employment Act* ("ADEA") that may change the ways in which employers are required to provide health benefits to retired employees.

provided benefits is exempt from the ADEA's prohibitions against discrimination.

The EEOC adopted a [regulation](#), effective December 26, 2007, which exempts from ADEA protection the reduction or elimination of health benefits provided to retirees once they become eligible for Medicare.

The American Association of Retired Persons is attempting to challenge the rule in the United States Supreme Court, and the request is still pending. The rule is, however, currently effective.

Under the new rule, regardless of whether a retired employee actually enrolls in Medicare or a similar State program, such reduction/elimination of employer-

Please also note that the mere change in the rule, by itself, would *not* permit an employer to reduce/eliminate health insurance benefits to Medicare-eligible retirees if the employer is contractually bound to continue providing such benefits either through an individual contract or collective bargaining agreement.

Please contact Cindi DeCola or R.J. Hazeltine-Shedd with questions.

HLERK Partners Krent and Brickman Honored--We are pleased to announce that our partner **Nancy Krent** has been named the recipient of the National School Boards Association, Council of School Attorneys award for Distinguished Service "in recognition of her exemplary leadership and service in support of the mission of the Council of School Attorneys." Nancy is a past National Chairman of the Council of School Attorneys.

Heather Brickman and **Barbara Erickson** will address the Seminar on school district requirements concerning 403(b) and 409 A plans the previous day at 3:00 p.m.

For those of you who will soon be in Orlando for the annual conference of the National School Boards Association, please feel free to join Nancy as she receives her award on **Friday, March 28th at 8:15 a.m.** in the Pacifica Ballroom of the Royal Pacific Hotel, site of the School Law Seminar.

In addition, Nancy Krent has been named an Illinois *Super Lawyer* for 2008. She joins HLERK partners **Terry Hodges, Mike Loizzi, Stan Eisenhammer and Bennett Rodick** who were selected in 2006 as *Illinois Leading Lawyers*.

We also congratulate our partner Heather Brickman on assuming the Chair of the Illinois Association of School Boards, Council of School Attorneys. Heather recently chaired the annual School Law program as part of the Joint Conference in November.

Congratulations Nancy and Heather!

403(b) Cont. account mandatory distributions. The automatic inclusion of these optional provisions by a school district may not be in accordance with the district's practice and may increase the administrative burdens on the district for plan operation.

transferred) before 2009 and "orphan" accounts.

In addition to the model language, the publication provides guidance on 403(b) contracts that were issued (or

The IRS Guidance presents a variety of complex issues for school administrators and creates liability risk for school districts utilizing 403(b) plans. Contact Heather Brickman or Barbara Erickson with inquiries.

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
3048 Spring Mill Drive . Springfield, Illinois 62704
23 Public Square . Suite 260 . Belleville, Illinois 62220