

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

**Tax Flurry Forecast for January 1-**

As we reported in previous editions of *The Extra Mile*, the IRS released numerous final and proposed regulations affecting employee benefits that become effective on *January 1, 2009*.

The **final Section 409A regulations** govern non-qualified deferred compensation arrangements, including many types of compensation agreements entered into by school districts in which payment of compensation is made to an employee or former employee in a calendar year after the right to receive such money has irrevocably vested. Such a deferred compensation arrangement may be subject to early income taxation and excise taxes unless it complies with

409A's written requirements by January 1, 2009.

**Final Section 403(b) regulations**

incorporate numerous changes regarding the administration of 403(b) plan arrangements, including the necessity for 403(b) arrangements to be set forth in a written plan document by January 1, 2009.

**Proposed Section 125 cafeteria plan regulations**

incorporate years of guidance provided by the IRS affecting these types of plans (a.k.a. flexible benefits), modify nondiscrimination testing procedures and set forth written plan requirements. While these rules are in proposed form, they

**Final Family Medical Leave Act Regulations Issued--**

On November 17<sup>th</sup>, the United States Department of Labor ("DOL"), the federal agency responsible for enforcing the *Family and Medical Leave Act of 1993* ("FMLA"), issued its long awaited final rule to implement the FMLA's new military leave entitlements and to update and clarify the existing regulations.

The final rule becomes effective January 16, 2009, and makes significant changes to the existing FMLA regulations with the goal of clarifying and improving a regulatory framework so that both workers and employers are informed of their responsibilities and rights under the FMLA.

Some of the significant topics addressed in the final rule include: (1) the new military caregiver leave and qualifying exigency leave entitlements; (2) the medical certification process and related forms; (3) the clarification of the definition of "serious health condition"; and (4) the employers'/employees' notice obligations.

You can obtain a copy of the Final Rule by visiting <http://www.dol.gov/esa/whd/fmla/finalrule.htm>. In light of this final rule, all public employers should review and update their existing FMLA policies to ensure that such policies include the two new military leave

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**Consumer Price Index**

Percent change for the month of **October, 2008**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-1.0	-1.1
12 Mth	3.2	3.6
St. Louis-6 Mth	2.0	2.3
12 Mth	3.2	3.6
U.S. Mthly	-1.0	-1.3
12 Mth	3.7	3.8

November CPI figures will be released December 18, 2008. For the most recent CPI, visit our website at: [www.hlerk.com](http://www.hlerk.com)

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**Reminders & Notes**

- **Determine dates for semi-annual review of closed session minutes (typically January and July).**
- **Our thanks to the record number of attendees at the IASA sponsored *The Year in Review: The Highlights and Lowlights of Illinois School Law 2008*. An order form for our conference handbook, summarizing the year in school law, is attached.**
- **Please take the opportunity to review and register for our upcoming HLERK/MEDS-PDN school law programs by visiting [www.hlerk.com](http://www.hlerk.com) or [www.meds-pdn.com](http://www.meds-pdn.com). We look forward to seeing you there.**

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**FMLA Continued** entitlements and to ensure compliance with the newly revised rule. HLERK is in the process of updating its model FMLA policy which will be available for purchase in December.

**Contact Cindi DeCola or John DiJohn with your FMLA inquires generally or with questions concerning the Final Rule. To purchase the HLERK Model FMLA Policy and Administrative Procedures, please send in the attached order form.**

**Tax Flurry Continued** may be relied upon until final regulations are issued and are effective January 1, 2009. **In order to assist school administrators with the new regulatory requirements, HLERK has joined with MEDS-PDN to offer an all new program titled**

**Employee Benefits Overview. Join Heather Brickman and Barb Erickson on December 18<sup>th</sup> in Schaumburg or January 22<sup>nd</sup> in Lincolnshire. Visit [www.hlerk.com](http://www.hlerk.com) to register on-line, or contact Heather and Barb with your employee benefits inquiries.**

**Office for Civil Rights Issues Guidance on Inclusion of Special Education Information on Student Report Cards and Transcripts** – On October 17, 2008, the Office for Civil Rights of the U.S. Department of Education (“OCR”) issued additional guidance regarding under what circumstances school districts may show that a student is receiving special education services on a report card or transcript. The answers contained within this particular guidance expand upon an earlier OCR ruling issued in July 2006.

long as the notations enable parents to understand their child’s progress to the same extent as parents that have children without disabilities.

This guidance reiterates that, according to OCR, it is permissible under IDEA, Section 504, and Title II of the *Americans with Disabilities Act* for a school district to indicate that a child is receiving special educational and/or related services, but only to the extent that such information is used to inform the student and parents about their child’s progress or level of achievement. OCR clarified that a report card may specifically refer to a student’s IEP or 504 plan in order to report on a student’s progress.

With regard to transcripts, OCR stated that because the purpose of a transcript is to inform colleges or prospective employers of a student’s credentials and achievements (not progress), transcripts may not disclose that a student has received special education and/or related services because to do so would single out those students with disabilities. However, OCR did explain that districts may show that a student took classes with a modified or alternate education curriculum on a transcript, as long as they do not disclose that a student has a disability.

Additionally, OCR stated that special education students who participate in the general education curriculum may be graded using the same standards under which regular education students are graded for the same class. A district may also indicate on a report card that a student is receiving accommodations in a regular classroom setting to the extent that such information informs parents about their child’s progress.

OCR also warned that, generally speaking, a transcript may not reflect the use of accommodations, since accommodations do not typically reflect a student’s academic achievements. Finally, regarding a student’s completion of an academic program, a district may indicate a student’s receipt of a certificate of attendance in lieu of a regular diploma, but only in those circumstances where doing so would not disclose that a student has a disability or has received special education services (i.e., where certificates are used for all students) and where such a certificate is issued for the purpose of reporting on a student’s academic credentials.

Asterisks, symbols, or other specific notations may be used on the report card to make such distinctions, as

**The OCR guidance can be found at <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20081017.pdf>. If you have questions regarding grading issues, please contact Bennett Rodick or Debra Kaplan.**

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