

PAYROLL GUIDANCE: IRS SUSPENDS 2005 INFORMATION REPORTING REQUIREMENTS FOR DEFERRED COMPENSATION

By: **Douglas L. Hanisch & Jason P. Lacey**
dhanisch@foulston.com jlacey@foulston.com

Background

- The American Jobs Creation Act of 2004 requires information reporting each year with respect to amounts deferred by employees and independent contractors under nonqualified deferred compensation plans. Total annual deferrals by or for an employee must be reported in box 12 of the employee's Form W-2 (using code Y), and total annual deferrals by or for a nonemployee must be reported in box 15a of a Form 1099-MISC issued to the individual.

Year 2005 Information Reporting

- Effective for calendar year 2005, the IRS has suspended employers' and payers' reporting obligations with respect to amounts deferred under nonqualified deferred compensation arrangements (Notice 2005-94). Deferrals during calendar year 2005 are not required to be reported on Form W-2 or Form 1099-MISC. This is temporary relief, however. Absent further guidance from the IRS, information reporting for calendar years 2006 and beyond will be required as described above.

Other Deferred Compensation Plan Guidance

- The IRS and Treasury Department recently issued proposed regulations providing guidance on compliance with Section 409A of the Internal Revenue Code ("Code"). The regulations give employers and other sponsors of deferred compensation arrangements until December 31, 2006 to amend their deferred compensation arrangements to comply with Section 409A of the Code. However, deferred compensation arrangements must be operated in accordance with the general requirements of Section 409A from and after January 1, 2005 in order to comply with Section 409A. Employers will want to review their deferred compensation arrangements (including elective deferral arrangements, SERPs, SARs, phantom stock plans, nonqualified options, and severance plans) during 2006 to ensure they comply, both in form and operation, with Section 409A and the new proposed regulations.

For Further Information

Foulston Siefkin regularly counsels clients on issues relating to ERISA and Executive Compensation. If you are interested in additional information regarding these matters, please visit our website at www.foulston.com or if you would like to discuss specific ways in which Foulston Siefkin can help you can contact **Doug Hanisch** at (316) 291-9748, or dhanisch@foulston.com, **James Rankin** at (785) 233-3600, or jrankin@foulston.com, or **Jason Lacey** at (316) 291-9756, or at jlacey@foulston.com.

Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Wichita, Topeka, and Overland Park, Foulston Siefkin provides a full range of legal services to clients in the areas of Administrative & Regulatory, Agribusiness, Antitrust & Trade Regulation, Appellate Law, Banking & Financial Services, Commercial & Complex Litigation, Construction, Creditors' Rights & Bankruptcy, E-Commerce, Education & Public Entity, Elder Law, Emerging Small Business, Employee Benefits & ERISA, Employment & Labor, Energy, Environmental, Estate Planning & Probate, Family Business Enterprise, Franchise, General Business, Government Investigations & White Collar Defense, Health Care, Immigration, Insurance Defense Litigation, Insurance Regulatory, Intellectual Property, Life Services & Biotech, Mediation/Dispute Resolution, Mergers & Acquisitions, OSHA, Product Liability, Professional Malpractice, Public Policy Law & Government Relations, Real Estate, Securities, Tax Exempt Organizations, Taxation, Water Rights, and Workers Compensation. This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.