SHDR
STANLEY, HUNT, DUPREE & RHINE, INC.
Benefit Consultants
A subsidiary of BB&T

One Source. Integrated Solutions.

The HEART Act: Impact on Employee Benefits

In an effort to further enhance employer provided benefits to our troops and their families, the President recently signed into law the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART" Act). Previously, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) established vital reemployment and employee benefits for members of the armed services. The HEART Act amends and enhances USERRA and provides additional benefits to aid the families of deceased and disabled soldiers. Some of the new benefits are mandatory while others are left for employer choice. Below is a brief explanation of some of the key employee benefit features of the Act.

Qualified Plans, 403(b) Plans, and 457(b) Plans:

- Retroactively effective to January 1, 2007, employers *must* apply any special death related benefits under the plan (other than additional accrued benefits) to participants who have died while performing qualified military duty. For example, if the plan provides for full vesting at death regardless of years of service, this enhancement must be applied to the benefits of a participant who dies on or after January 1, 2007 while on active military duty.
- Effective January 1, 2007 or later, employers *may choose* to provide additional accrued benefits to participants who have died or become disabled while on qualified military duty. Under this optional provision, the deceased or disabled participant would be treated as if they were reemployed on the day before death or disability and therefore eligible for USERRA "make-up" benefits. Special rules apply to determine the amount of employer contributions to be made for the period of military service.
- Effective January 1, 2008, the qualified reservist distribution, which had expired for service commencing after December 31, 2007 under the terms of the Pension Protection Act of 2006, has now been made permanent. This rule generally allows the participant to make a penalty-free withdrawal from a qualified elective deferral account while on active duty for more than 179 days.
- Effective January 1, 2009, employers providing supplemental differential pay to employees called to active duty must treat such payments as eligible compensation for plan purposes and subject such payments to income tax withholding as wages. Differential pay generally includes payments to such individuals designed to make-up for some or all of the difference between their employment wages and military pay. Due to this rule, elective deferral contributions, employer contributions, and benefit accruals must consider these payments as eligible plan compensation.
- Effective January 1, 2009, to enhance access to retirement funds for participants called to military duty, such individuals will be treated as having severed from employment for purposes of plan distribution timing requirements once the period of service exceeds 30 days. This provision will bypass any in-service distribution restrictions of the plan for applicable participants.

Health Flexible Spending Arrangements:

- Effective June 17, 2008 (date of enactment), health flexible spending arrangements offered under Code Section 125 may allow participants who have been called to active duty for more than 179 days or longer the ability to take distributions from the FSA, overruling the general "use it or lose it" rule. This provision will allow a qualifying reservist to take a distribution from the health FSA so long as the distribution occurs during the period of service and before the due date for reimbursements for the plan year that includes the date the participant is called to duty.

All employers should review their benefits structure to determine the impact of the HEART Act on their programs. Although operationally effective as of the dates noted above, employers have until the end of the plan year that begins in 2010 to formally amend their applicable plan documents. IRS guidance will be forthcoming.

Copyright ©2008 Stanley, Hunt, DuPree & Rhine, Inc. All Rights Reserved.

The information contained in this website is intended to provide general information on matter of interest in the area of employee benefit plans and is provided with the understanding that our company is not engaged in rendering legal or tax advice. Legal or tax questions should always be referred to a qualified tax advisor such as an attorney or CPA. Insurance products are offered through BB&T Insurance Services, Inc.