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EMPLOYMENT LAWSCENE ALERT: IT'S TIME TO AMEND 403(B) RETIREMENT PLAN DOCUMENTS!

If your organization is a public school or university, a tax-exempt charter school or hospital, a church, church-affiliated entity, or other tax-exempt organization, it is eligible to sponsor a 403(b) retirement plan.

For any eligible sponsor of a 403(b) plan, it is critical, to ensure the ongoing tax-compliance of the plan, to conform your document to the form of an IRS pre-approved 403(b) document (available for use since March 2017) no later than March 31, 2020. This date is the IRS-announced end of the "special remedial amendment period" that permits correction of plan language defects retroactive to January 1, 2010, provided that plans are operated in the meantime according to the regulatory requirements.

This means that if your last 403(b) plan amendment and restatement pre-dates March 2017, or is not otherwise in the form of a 2017 IRS-approved document, an amendment and restatement must occur by the deadline to ensure proper compliance. The IRS will not honor, or issue, any letters as to the qualified status of an individual 403(b) plan. This is why all 403(b) plan sponsors must adopt a 2017 pre-approved document. Pre-approved documents are available through a number of plan service providers, third-party administrators, and employee benefits attorneys.

Any employer who, for whatever reason, *never* complied with the final 403(b) regulations (and ERISA, if applicable), and operated 403(b) program subsequent to December 31, 2009 *without* adopting a written 403(b) plan document, may make use of an IRS correction program. Under the IRS's Employee Plan Compliance Resolution System, a properly documented correction and application, together with a fee, can be submitted to obtain administrative relief for the failure to previously document the plan. It is likely that the ability to correct a failure to have a plan document will become significantly more restricted (and expensive) if not addressed prior to March 31, 2020.

In our experience, the IRS has been active, in recent years, in auditing the operations of 403(b) plans of Wisconsin entities and organizations. It should be anticipated that 403(b) plan audits on and after April 1, 2020 will review not only operational, but also documentational,

compliance with the 403(b) plan rules.

While the March 31, 2020 deadline is still two and a half years away, it can take some time for 403(b) plan changes to be fully considered and approved by the required bodies (retirement plan committees, and or boards of education or boards of directors) that are common within the organizations of eligible employers.

The existence of the deadline also presents an opportunity for 403(b) plan sponsors to revisit the extent to which current plan design features are functioning to support human resources objectives (on both a recruitment, retention, and costs basis), and whether any design amendments should be considered in conjunction with the required amendment and restatement.