



IRS Provides Guidance for Contributing Unused Vacation Time to a Qualified Plan

Employment, Labor & Benefits Practice Group

Foster Swift Employment, Labor & Benefits Quarterly

October 2009

PRACTICE AREAS

Employee Benefits

The IRS recently illustrated two situations in Rev. Rul. 2009-31 in which the dollar equivalent of an employee's unused paid time off (PTO) can be contributed to an employer's profit-sharing plan without negatively affecting the plan's qualified status. In one situation, the employer required the value of an employee's unused PTO, up to applicable Code Section 415 limits, to be contributed as of December 31 as a nonelective contribution to the Plan. Any remainder would be paid to the employee in cash the following year.

In the second situation, participants in the plan could elect to have all or a portion of the value of their PTO, up to applicable Code Section 415 and 401(a)(30) limits, contributed to the plan in the following year (an elective contribution), with the remainder paid in cash.

In both situations, the IRS concluded that PTO contributions that (1) were made as described above and (2) satisfied the applicable nondiscrimination requirements would not be taxable to the employee until distributed by the plan, and any unused PTO amounts paid in cash would be taxable to the employee in the year paid.