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Avoiding 409A Pitfalls While in Financial Distress

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Dealing with the complexities of the strict non-qualified deferred compensation tax rules under section 409A of the Internal Revenue Code is often challenging for employers and employees in the ordinary course of business, as many issues relate to the timing of deferred compensation payments and prohibitions on accelerating or delaying payments.

During times of financial turmoil and business uncertainty, these challenges become even more acute for cash-strapped companies that may want to further delay payments or make other changes to deferred compensation arrangements. It is also difficult for employees who may want to tap into their deferred compensation accounts earlier than the originally scheduled payment dates.

This article focuses on the key 409A issues that distressed companies and their employees, who may be impacted by their own financial hardship, may face in the wake of an economic downturn and addresses the 409A pitfalls that may arise. This is important in order to avoid adverse tax treatment on employees and for companies to deliver compensation in a tax-efficient manner to its employees.

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