

COVID-19: Impact on Nonqualified Deferred Compensation Plans

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Recent economic instability caused by the coronavirus (COVID-19) pandemic has caused many companies and their employees to suffer economic hardships that do not have a clear end in sight. As a result of ongoing fluctuations in the markets, uncertainty about job security and increased medical and other expenses, people are experiencing a real need for increased liquidity in the short term. Companies that maintain nonqualified deferred compensation plans may be approached by employees seeking to take distributions of deferred compensation from their plan accounts or to cancel or suspend currently outstanding deferral elections under the plan.

The challenge for both companies and their employees is that nonqualified deferred compensation is subject to Section 409A of the Internal Revenue Code, which was designed to prevent the early payment of deferred compensation amounts and often fails to provide needed flexibility in a crisis like we are experiencing today.

This memo discusses various approaches that companies may be able to utilize within the current Section 409A landscape to provide their employees some relief by allowing them to take distributions of, or cancel deferral elections with respect to, nonqualified deferred compensation.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Jeffrey P. Crandall

+1 212 450 4880
jeffrey.crandall@davispolk.com

Charlotte R. Fabiani

+1 212 450 3403
charlotte.fabiani@davispolk.com

Edmond T. FitzGerald

+1 212 450 4644
edmond.fitzgerald@davispolk.com

Adam Kaminsky

+1 202 962 7180
adam.kaminsky@davispolk.com

Kyoko Takahashi Lin

+1 212 450 4706
kyoko.lin@davispolk.com

Chaoyuan (Charles) Shi

+1 212 450 3346
charles.shi@davispolk.com

Veronica M. Wissel

+1 212 450 4794
veronica.wissel@davispolk.com

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