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*Legal power for startups to
mid-size enterprises in the
State of Washington*

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WASHINGTON BIZLAW

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Dodge the Deferred Comp Bullet

The Treasury Department recently issued final regulations under section 409A of the Internal Revenue Code, which significantly restricts the deferral of tax on nonqualified deferred compensation plans. Section 409A potentially affects many plans, including:

- Severance and deferred bonus arrangements;
- Restricted stock units;
- Non-qualified stock options;
- Stock appreciation rights;
- Phantom stock awards;

Section 409A carries a big stick. If a plan covered by Section 409A doesn't comply with its provisions, the plan participants are required to (i) accelerate recognition of taxable income that otherwise would have been deferred into future years; (ii) pay interest on the taxes due on the accelerated income; and (iii) pay a whopping 20% *additional* income tax on the deferred compensation.

Employers have been required to comply with Section 409A since its initial effective date, which was January 1, 2005. However, the end of 2008 is the final deadline for documentary compliance and for taking advantage of certain transition rules for existing plans. The regulations are complicated. Companies should consult with their professional advisors now to find out if their plans comply, and if not, what changes should be made before December 31, 2008. If your company is thinking of adopting a new nonqualified plan, be sure to first consult a professional advisor.



Dirk Bartram



Dan Henke

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Watch Out For Those Dead Celebrities!

Washington just amended its statute on personality rights. Take heed if you use the name, voice or picture of a famous dead person in advertising, on your website, or in your products (such as video games, dolls or action figures).

The original statute, which took effect in 1998, conferred a right of publicity on famous people and other individuals. Under the law, a celebrity (or other individual) or her estate could prevent others from using the person's image or likeness without permission. However, case law held that Washington's personality rights statute didn't apply to deceased persons who were domiciled *outside* of Washington at the time of their death.

That's changed. Effective June 12, 2008, the 1998 statute was amended to clarify that a deceased personality, *even one who died when domiciled in another state*, is protected by the Washington statute. Moreover, this protection applies even if the state of domicile fails to recognize the personality rights which are recognized in Washington.

Thinking about putting a likeness of Jimi Hendrix on your Washington beer label? Would you like to have Marilyn Monroe make a cameo appearance in your video game? Forget about it, unless you get permission or qualify under one of the exceptions under the Washington statute.

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