

*Dear Valued Clients and Business Partners,*

*We hope that this newsletter finds you well as we prepare to close out 2010. At this time of year, we often reflect over the past year to measure our successes and analyze our challenges. 2010 was an exciting and prosperous year for Imageon in which we expanded our offices and our staff, and penetrated new markets across the country. We have increased our service offerings by creating new trainings, reports, and other services to better serve our clients. Additionally, we are currently working on various enhancements to improve the functionality and user experience of HRISON, our proprietary Human Resource Information System.*

*We would like to take this opportunity to thank you for your partnership and support over the past year and wish you, your staff, and your families a very happy and healthy holiday season and a prosperous new year!*

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## Compensation Trends for 2011

As we near the end of the calendar year, many organizations are preparing to conduct performance evaluations, as well as plan their compensation strategies for 2011, including bonus payouts and salary adjustments that generally follow performance reviews. There is a wealth of research performed each year on compensation planning and results may vary slightly depending on methodologies, survey samples, etc.; however, there are several key trends that are clearly identified for 2011. They are as follows:

- Projected salary increases for 2011 are slightly higher than in 2010.
- While salary freezes were common in 2009, they were significantly less common in 2010 and most companies report planning to offer salary increases in 2011, with a very small percentage planning to freeze base salaries.
- There has been an increase in the percentage of variable pay (bonus, incentive) used to comprise total cash compensation, in order to factor company performance into compensation spending and reward staff for their efforts without increasing long-term fixed payroll expenses.

- With the economy (and company performance in most industries) slow to recover, companies are targeting their compensation dollars by increased use of pay-for-performance systems.

A review of compensation planning surveys conducted by large consultancies such as Mercer, WorldatWork, Culpepper, etc. shows that most companies are planning overall base salary increase budgets of about 2.9% in 2011. Furthermore, depending on the survey source, only between 2% - 10% of companies are planning to freeze base salaries in 2011, which represents a significant decrease in salary freezes over the past two years.

Over the past few years, there has been a trend of variable pay (bonus, etc.) making up a larger percentage of total cash compensation. In many cases, companies who froze salaries since the start of the recession have been using lump sum bonus payments to reward staff in lieu of salary adjustments because salary adjustments represent a longer-term payroll commitment. Also, variable pay programs usually factor company financial performance into bonus calculations, so that companies are only paying out what they can afford.

Another major trend identified by several compensation planning surveys is that performance is factoring more heavily into compensation decisions. An increasing number of companies are establishing a clear link between pay and performance for a number of reasons. One reason is that in an effort to cut costs, many companies have conducted layoffs, resulting in minimum staffing needed for efficiency and effectiveness in operations. When implementing this type of staffing strategy, it is essential to retain key staff members and top performers who can handle the workflow that may be significantly increased. Another reason is that companies are preparing for the need to retain top performers as the economy picks up and the job market improves. During the recent period of high unemployment, staff members have been less likely to leave their positions and employers have not felt the strain of competition for top talent. As the economy improves and more companies start hiring and competing for talent, top performers who may have been putting off a change are more likely to pursue other options.

### **What Will Be the Impact of the 2010 Midterm Election on the Workplace?**

November 2, 2010 marked an historic midterm election in the U.S. in which Republicans gained more seats in a congressional election than any party since 1948, including the majority of seats in the House of Representatives. This shift will no doubt have a profound impact on the passing of legislation in general, including workplace-related issues.

Proposed workplace legislation introduced and/or supported by Democratic leaders and supported by President Obama now has little chance of advancing in Congress, with Republicans gaining the majority in the House of Representatives. This legislation includes the Employee Free Choice Act (which was discussed in the first issue of 'On the HRISON'), the Employment Non-Discrimination Act and the Paycheck Fairness Act.

Although the 111th Congress will return for a lame-duck session in mid-November and may address some of these initiatives, Congress' main focus will most likely be tax cuts first introduced during George W. Bush's presidency and set to expire on December 31, 2010. These tax cuts will also top the agenda in January 2011 when the 112th Congress convenes, with Democrats maintaining control of the Senate and Republicans taking control of the House of Representatives. Republican leaders favor making the tax cuts permanent and claim that the tax breaks are the best way to stimulate the economy. Most Democrats support extending the tax cuts temporarily and only to individuals and families who earn less than \$250,000 per year. Political observers say that the lame-duck Congress is likely to approve a

temporary extension of the tax cuts before handing off the task of finding a more long-term solution to the 112th Congress.

Furthermore, it is anticipated that instead of focusing on workplace-related legislation, the 112th Congress will turn its attention to looking for ways to stimulate the faltering U.S. economy and revive a weak job market. This will likely result in issues such as proposals to encourage workplace flexibility and strengthen the employment verification process, as well as a repeal of the military's "don't ask, don't tell" policy taking a backseat to issues more directly related to the economy and job creation.

There has been much talk among Republican candidates about repealing the health care reform law (Patient Protection and Affordable Care Act) signed into law in March 2010. The reality is that this is highly unlikely during Barack Obama's presidency, since repeal is subject to a veto from the President and even though Republicans will have the majority in the House in 2011, they will still fall short of the two-thirds majority vote needed to override a presidential veto. It is more likely that Republicans will focus on changing or repealing certain provisions of the health care reform law.

### Planning a Successful Company Holiday Party

As we enter the holiday season, many companies are planning their holiday (or year-end) celebrations. While traditional holiday parties have been eliminated over the past couple of years as a cost-cutting measure at some companies, studies show that more than half of U.S. companies still sponsor some sort of celebration during the holiday season. Holiday parties are a great way to show appreciation for your staff, celebrate successes over the past year, and encourage staff to interact in a social setting; however, they should be planned and executed with great care. We have probably all heard horror stories associated with an office party that got out of control with consequences ranging from sexual harassment to drunk driving. The following are some guidelines for holiday party planning to ensure that everyone has a good time, while assisting the company with reducing liability.

*In order not to offend any staff members and maintain morale:*

- Avoid religious affiliations, decorations, sentiment, etc. and instead focus on celebrating the team and this year's successes.
- Be especially sensitive to the holiday party budget if your company has recently experienced layoffs, schedule or salary reductions, etc. If the company sponsors a lavish holiday party in the face of deep budget cuts in other areas, staff may consider the party a misuse of funds.

*In order to avoid compensation issues:*

- Make sure that all staff members understand that attendance at the party is voluntary and do not allow staff to perform work during the party.

*In order to prevent inappropriate behavior, avoid liability and ensure everyone's safety:*

- Remind staff that the company's workplace policies and rules of conduct apply during the celebration.
- Do not hang mistletoe.
- Arrange a way of monitoring alcohol consumption, such as hiring a professional bartender, giving out drink tickets, and ensuring that no one under 21 years of age is served alcohol.
- Arrange for transportation and/or lodging for attendees who become too impaired to drive home safely.

One idea for controlling the holiday party budget and eliminating alcohol-related concerns is to sponsor a lunch party for staff where alcohol is either not served or strictly limited. This option is generally less expensive than a nighttime party and the chances of staff “cutting loose” with inappropriate behavior are reduced. As an extra “thank you”, after the party, inform staff they may take the staff the rest of the day off (business conditions permitting).

### **Break Times for Nursing Mothers**

When the Patient Protection and Affordable Care Act (PPACA) was signed by President Obama, many, if not most employers did not know that the Fair Labor Standards Act (FLSA) was also amended to require employers to provide break times and space for employees who are nursing mothers to express breast milk. At the time that the PPACA was passed, some states including New York and California already had similar legislation in effect, however, the amendment to the federal FLSA made the requirements much more far-reaching. However, keep in mind like all workplace legislation, employers must comply with any state requirements that are more favorable to the employee than the federal statutes.

The PPACA amendment to the FLSA requires employers subject to the FLSA with 50 or more employees to provide break times and an appropriate space, other than a bathroom, for nursing mothers who wish to express breast milk during work hours. Employers with fewer than 50 employees are not required to provide the break times “if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business”; however, the undue hardship standard has traditionally been a high one.

The PPACA amendment to the FLSA requires covered employers to provide employees “reasonable break time” for up to a year after a child’s birth to express breast milk each time that an employee has the need to do so. Like many other terms in the amendment, “reasonable” is not specifically defined, but it is likely that the reasonableness of the time required will depend on the individual. One example of federal and state law interaction is that the California lactation accommodation requirement does not contain a 1-year limit. As a result, California employers (and out-of-state employers with employees in California) must allow the break time for as long as the employee is nursing her new baby.

The lactation break times need not be paid, but employers should be aware that federal regulations require that rest periods of short duration (from 5 minutes to about 20 minutes) must be counted as hours worked (for Non-exempt staff). Exempt staff members should be provided reasonable break times without deduction from salary, but the staff member may be expected to maintain her regular number of working hours.

The PPACA amendment to the FLSA also requires companies to provide nursing mothers "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public."

Smaller companies may choose to address these special considerations as the need arises; however, we recommend that all companies include a policy regarding nursing mothers’ rights to these break times in their Staff Handbook.

### **IRS Announces Retirement Plan Contribution Limits for 2011**

The U.S. Internal Revenue Service (IRS) has announced dollar limits for pension plans and other retirement-related items for tax year 2011. In general, these limits will remain unchanged or be affected by very minor inflation adjustments.

### **401(k), 403(b) & 457(b) Plans**

- The elective deferral (contribution) limit for employees who participate in section 401(k), 403(b) or 457(b) plans, and the federal government's Thrift Savings Plan, remains **unchanged** at \$16,500.
- The catch-up contribution limit under those plans for those aged 50 and over remains **unchanged** at \$5,500.

### **Individual Retirement Accounts (IRAs)**

- The deduction for taxpayers making contributions to a traditional IRA is phased out for singles and heads of household who are active participants in an employer-sponsored retirement plan and have modified adjusted gross incomes (AGI) between \$56,000 and \$66,000, **unchanged** from 2010.
- For married couples filing jointly, in which the spouse who makes the IRA contribution is an active participant in an employer-sponsored retirement plan, the income phase-out range is \$90,000 to \$110,000, up from \$89,000 to \$109,000.
- For an IRA contributor who is not an active participant in an employer-sponsored retirement plan and is married to someone who is an active participant, the deduction is phased out if the couple's income is between \$169,000 and \$179,000, up from \$167,000 and \$177,000.
- The AGI phase-out range for taxpayers making contributions to a Roth IRA is \$169,000 to \$179,000 for married couples filing jointly, up from \$167,000 to \$177,000 in 2010. For singles and heads of household, the income phase-out range is \$107,000 to \$122,000, up from \$105,000 to \$120,000. For a married individual filing a separate return who is an active participant in an employer-sponsored retirement plan, the phase-out range remains unchanged at \$0 to \$10,000.

### **Section 415 Dollar Limits**

Section 415 of the Internal Revenue Code provides for dollar limits on benefits and contributions under qualified retirement plans, to be adjusted annually for cost-of-living increases. Limits applicable to deferred compensation plans are also affected by these adjustments under Section 415.

The dollar contribution limits that are adjusted by reference to Section 415(d) generally will remain unchanged for 2011. This is because the cost-of-living index for the quarter that ended Sept. 30, 2010, while greater than the cost-of-living index for the quarter that ended Sept. 30, 2009, remained less than the cost-of-living index for the quarter ended Sept. 30, 2008.

Following procedures under the Social Security Act for adjusting benefit amounts, any decline in the applicable index cannot result in a reduced dollar limit, and so dollar limits were not lowered for year 2010 plan contributions.

### **Other Annual Dollar Limits**

In addition, the IRS announced that:

- The limit regarding SIMPLE retirement accounts under Section 408(p)(2)E) remains **unchanged** at \$11,500.
- The limit on salary deferrals for deferred compensation plans of state and local governments and tax-exempt organizations, under Section 457(e)(15), remains **unchanged** at \$16,500.
- The compensation amounts of the Income Tax Regulations concerning the definition of "control employee" for benefit valuation purposes, under Section 1.61 21(f)(5)(i), remains unchanged at \$95,000. The compensation amount under Section 1.61 21(f)(5)(iii) remains **unchanged** at \$195,000.

- The dollar amount used to determine excess employee compensation under Section 430(c)(7)(D)(i)(II), with respect to a single-employer defined benefit pension plan for which the special election under section 430(c)(2)(D) has been made, is **increased** from \$1,000,000 to \$1,014,000.

The Social Security Administration announced in October 2010 that there will be **no increase** in monthly Social Security and Supplemental Security Income (SSI) benefits in 2011. Additionally, there will be **no change** in the maximum amount of earnings subject to the Social Security tax or in the retirement earnings test exempt amounts.

## 21<sup>st</sup> Century Communications and Video Accessibility Act of 2010

On Oct. 8, 2010, in the presence of legislators, disability advocates, members of the Federal Communications Commission (FCC), and Stevie Wonder, President Obama signed into law the Twenty-First Century Communications and Video Accessibility Act of 2010, which disability and communication advocates are calling the most significant disability law in 20 years. The bill extends communication and video technologies to people who are deaf, blind, or visually impaired.

According to the President, the Act “will make it easier for people who are deaf, blind or live with a visual impairment to do what many of us take for granted—from navigating a TV or DVD menu to sending an e-mail on a smart phone. It sets new standards so that Americans with disabilities can take advantage of the technology our economy depends on. And that’s especially important in today’s economy, when every worker needs the necessary skills to compete for the jobs of the future.”

Officials say the new law makes it easier for people who are blind, deaf, visually impaired to access the Internet, smart phones, television programming, and other video and communication technologies, as well as ensuring that emergency information is accessible to these individuals.

Funds of \$10 million annually will be allocated from the Interstate Relay Service Fund for equipment used by individuals who are deaf, blind, or visually impaired.

Members of the Coalition of Organizations for Accessible Technology say each provision of the new law has its own deadlines. The FCC will oversee the bill’s enactment.

## Additional Information

This information is being provided to you as a courtesy. For specific information about how the information in this newsletter affects your business, please do not hesitate to contact us at:

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