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LEGAL ALERT

Legal Alert: Sweeping Reforms Imposed by Dodd-Frank Act Create Obligations for Employers

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This alert is the first in a series that will address significant employment provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. President Obama signed this massive legislation on July 21, 2010. Dodd-Frank attempts a sweeping reform of the financial and banking industries on a scale not seen since the New Deal era. As the latest Congressional legislation well exceeding 1,000 pages, Dodd-Frank goes far beyond its title and contains a number of measures for employers to consider.

Particularly, the Act sets forth significant requirements related to executive compensation and corporate governance for publicly traded entities. These requirements include:

• ***Shareholder Approval of Executive Compensation***

The Act grants shareholders the right to a non-binding vote on executive compensation and golden parachute compensation.

• ***Executive Compensation Disclosures***

Companies will be required to disclose a clear description of executive compensation at annual shareholder meetings. This must include information that shows the relationship between executive pay and the company's financial performance, taking into consideration changes in stock values and dividends.

Companies also will be required to disclose the median of the annual total income of all employees (excluding the CEO), the CEO's annual total compensation, and the ratio of these two amounts.

• ***"Clawback" Provisions***

The Act requires companies to develop and implement policies providing for the disclosure of their policies on incentive-based compensation that is based on financial information required to be reported under the securities laws. If a company is required to prepare an accounting restatement due to erroneous financial statements that do not comply with accounting standards, the company must have policies in place that permit it to take back any incentive-based compensation the executive received in excess of what he or she should have been paid under the restatement for the 3-year period preceding the date of the accounting restatement.

• ***Enhanced Compensation Structure Reporting***

The Act directs Federal regulators to establish regulations or guidelines requiring covered financial institutions to disclose incentive-based compensation structures so that Federal regulators may decide whether the structures provide executive officers, employees, directors, or principal shareholders with excessive compensation or could lead to material financial loss of the financial institution. ***Bottom Line***

Dodd-Frank's disclosure provisions for publicly traded companies highlight the need for vigilance in a number of areas. The prospect of a non-binding shareholder vote on executive compensation promises to inject rhetoric from activist investors and labor unions into compensation decisions. Furthermore, the required disclosures of relative pay could be misleading or misconstrued and used in union propaganda or in emotional appeals for damages during litigation. Employers subject to these sections of Dodd-Frank should anticipate the controversies these disclosures may cause and prepare in advance to respond to these challenges.

Please watch for future installations in this series, which will discuss other provisions of the Dodd-Frank Act likely to impact employers, such as the Act's broad new whistleblower provision. If you have any questions regarding this Alert, please contact the authors, Jade Cobb, jcobb@fordharrison.com, or Matthew Gilley, mgilley@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.