Washington Update

IRS Memo Addresses Tax Treatment of Wellness Programs

The Internal Revenue Service (IRS) has clarified the tax treatment of certain payments, such as cash rewards or premium discounts, related to employer wellness programs. The clarification is in a memorandum issued May 27, 2016 by the IRS Office of Chief Counsel.

Employers generally offer wellness programs to improve and promote employee health and fitness. The programs allow employers to offer employees premium discounts, cash rewards, gym memberships and other incentives to participate.

The memo provides three examples of wellness programs to illustrate how IRS would treat those types of wellness programs for tax purposes. Overall, IRS concludes that the following tax treatment should apply to employer-provided wellness programs:

- Cash incentives or rewards should be treated as taxable income.
- Employer-provided money (either to the employee or directly to the gym) for an employee to join a gym or health club is taxable income.
- Reimbursements of employees' pretax contributions for premiums charged to participate in the program are taxable income.
- *De minimis* fringe benefits, such as T-shirts, are not taxable income.

The full memo is available at www.irs.gov/pub/irs-wd/201622031.pdf.

Contractor Not Required to Make Contributions

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The defendant argued that the plaintiffs were prevented from claiming the installation of stainless steel equipment as jurisdictional work because the work was an existing practice of the sheet metal workers, which was a limiting provision in the CBA. The district court determined the defendant's evidence was insufficient to demonstrate that the work performed did not fall within the union's jurisdiction.

The court disagrees and finds that the defendant presented undisputed evidence that the installation of stainless steel kitchen equipment was the prevailing trade practice of the sheet metal workers. Therefore, the CBA's limiting provision prevents the plaintiffs from claiming contributions from the nonunion subcontractors.

The court concludes that the defendant was not liable for contributions for the work performed in both claims. Accordingly, the court reverses the district court's grant of summary judgment in favor of the plaintiffs and remands the case for further proceedings.

Chicago Regional Council of Carpenters Pension Fund et al. v. Schal Bovis, Inc., Nos. 14-3413 & 14-3336 (7th Cir. June 10, 2016).